



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
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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 ON COMPLAINANT'S MOTION TO AMEND COMPLAINTS

The Initial Prehearing Exchange in these consolidated cases was completed on March 17, 2010, when Complainant filed its Rebuttal Prehearing Exchange. Included in that Rebuttal Prehearing Exchange was a Motion to Amend Complaints and for Other Discovery Pursuant to 40 C.F.R. § 22.19(e), ("Motion"). On March 30, 2010, Respondents filed their Reply to Complainant's Motion to Amend and for Other Discovery Pursuant to 40 C.F.R. § 22.19(e) ("Response").

Initial briefing on the Motion was completed on April 7, 2010, when Complainant filed its Reply to Respondent's Reply to Complainant's Motion to Amend Complaints and for Other Discovery Pursuant to 40 C.F.R. § 22.19(e), ("Reply"). This Order addresses the Motion to Amend Complaints; the Motion for Other Discovery remains pending.

In its Motion seeking leave to amend the Complaints, Complainant requests permission to add parties to two cases. First, Complainant seeks to add Respondent Advanced Products Technology, Inc. ("Advanced Products") as a party in the Matter of Custom Compounders, Inc., Docket No. FIFRA-07-2009-0042. Second, Complainant seeks to add Respondent FRM Chem, Inc. ("FRM") as a party in the Matter of Synisys, Inc., Docket No. FIFRA-07-2009-0041.

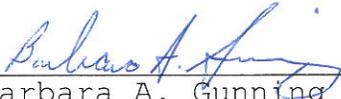
Complainant seeks these changes based on representations made by the Respondents Custom Compounders, Inc. ("Custom

Compounders") and Respondent Synisys, Inc. ("Synisys") in their respective Answers and their joint Prehearing Exchange. Specifically, Custom Compounders and Synisys allege that Respondents Advanced Products and FRM are responsible for the alleged violations stated in the respective Complaints. Respondents also do not object to adding these corporate parties to the other Complaints. Respondents do not object to these requested amendments.

Second, Complainant seeks to add two additional parties, Keith G. Kastendieck and Karlan C. Kastendieck, to each of the consolidated cases. In its request, Complainant alleges that both individuals were "personally involved in the sales and distribution of the two FRM Chem, Inc. products alleged in the four Complaints, and, as such, may be held individually liable." Complainant's Mem. Supp. Complainant's Mot. Amend Compl. and Other Disc. at 13 ("Complainant's Supporting Memo"). Respondents object to the amendment of the Complaints to add Keith G. Kastendieck and Karlan C. Kastendieck as parties.

The final amendment Complainant seeks to make involves the addition of five (5) counts to the Complaint in the Matter of Advanced Products Technology, Inc., Docket No. FIFRA 07-2008-0036, and a corresponding increase in penalty proposed in that case. The additional counts allege five (5) separate unlawful sales or distributions of an unregistered pesticide during the first seven (7) months of 2009. Complainant seeks to add \$37,500 to the proposed penalty. Respondents object to this amendment of the Complaint in the Matter of Advanced Products Technology, Inc.

To date, Complainant has filed a Motion to Amend Complaints, a Supporting Memorandum, and multiple explanatory attachments, but has not filed a Proposed Amended Complaint. Without a Proposed Amended Complaint, the proposed additional allegations cannot be deemed to have been pled and I cannot rule on the Motion. See generally *Com. of Pa. ex rel Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) (Allegations must be set forth in a complaint in order to be proper, not merely described in a brief). At this juncture, the Motion must be **DENIED**.

  
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Barbara A. Gunning  
Administrative Law Judge

Dated: April 15, 2010  
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 on Complainant's Motion to Amend Complaints**, dated April 15, 2010, was sent this day in the following manner to the addressees listed below.



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Mary Angeles  
Legal Staff Assistant

Original and One Copy by Hand Delivery to:

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**Dated: April 15, 2010  
Washington, D.C.**