

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF) Docket No. FIFRA-07-2009-0042
)
Custom Compounders, Inc.) ANSWER TO
Advanced Products Technology, Inc.) FIRST AMENDED COMPLAINT
Keith G. Kastendieck and)
Karlan C. Kastendieck,)
)
Respondents.)

RESPONDENTS KEITH G. KASTENDIECK AND KARLAN C. KASTENDIECKS'
ANSWER TO FIRST AMENDED COMPLAINT

COME NOW Respondents Keith G. Kastendieck ("Keith") and Karlan C. Kastendieck ("Karlan")(collectively, "Individual Respondents"), by and through their undersigned counsel, and for their Answer to the First Amended Complaint filed by United States Environmental Protection Agency ("EPA"), state the following:

Section I

Jurisdiction

1. Individual Respondents admit the allegations contained in Paragraph 1.
2. Individual Respondents deny the allegations contained in Paragraph 2.

Section II

Parties

3. Individual Respondents admit the allegations contained in Paragraph 3.
4. Keith admits the allegations contained in Paragraph 4. Karlan admits the allegations contained in Paragraph 4 with the exception of the allegations concerning him being an officer,

director and shareholder of the Respondent Corporations for the period of time set forth in the First Amended Complaint.

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. Individual Respondents agree with the registration allegation and the supplemental registration allegation in Paragraph 12. However, they are without sufficient information, knowledge or belief to admit or deny the cancellation/prohibition allegations of this paragraph and, therefore, deny same. Further, Individual Respondents state that they were not a party to any registration, supplemental registration, cancellation and/or prohibition from EPA regarding the sale or distribution of FRM CHLOR.

13. Individual Respondents admit the allegations contained in Paragraph 13.

14. Individual Respondents admit the allegations contained in Paragraph 14.

15. Keith admits the allegations contained in Paragraph 15. Karlan is without sufficient information, knowledge or belief to admit or deny the allegations contained in Paragraph 15 and, therefore, denies same.

16. Individual Respondents deny the allegations contained in Paragraph 16.

17. Individual Respondents deny the allegations contained in Paragraph 17.

18. Individual Respondents admit the allegations contained in Paragraph 18.

19. Individual Respondents deny the allegations contained in Paragraph 19.

20. Individual Respondents deny the allegations contained in Paragraph 20.

21. Individual Respondents deny the allegations contained in Paragraph 21.

Violations

22. Individual Respondents deny the allegations contained in Paragraph 22.

Counts 1-5
Paragraphs 23 - 62

Each Count has eight paragraphs in a similar series.

The first paragraph in the series realleges numbered paragraphs and incorporates them by reference herein. Likewise, Individual Respondents reallege and incorporate their answers just as Complainant did.

The second paragraph in the series alleges that the two Corporate Respondents sold or distributed FRM CHLOR to the Franklin County Humane Society on a date certain. Individual Respondents are not alleged to have sold or distributed this product to any person or entity. Individual Respondents admit that Advanced Products Technology, Inc. donated and distributed the product to the Franklin County Humane Society. Individual Respondents deny that Custom Compounders, Inc. did so.

The third paragraph in the series references an Invoice Number. Individual Respondents admit the Invoice Number.

Individual Respondents deny the allegations in the fourth, fifth, sixth, seventh and eighth paragraphs in the series of paragraphs in these Counts.

AFFIRMATIVE DEFENSES AND OTHER RESPONSES

Section V

Total Proposed Penalty

63. While Individual Respondents are aware the quoted sections of FIFRA involve potential strict liability (particularly to the Corporate Respondent), for purposes of a laches defense as well as addressing the appropriateness of any penalty, Individual Respondents state that the Complainant never notified FRM Chem, Inc. of any cancellation of any registration of this product.

Appropriateness of Proposed Penalty

64. While Individual Respondents are aware the quoted sections of FIFRA involve potential strict liability (particularly to the Corporate Respondent), for purposes of a laches defense as well as addressing the appropriateness of any penalty, Individual Respondents state that the Registrant never advised FRM Chem, Inc. that the registration had been cancelled as Complainant requires.

65. For the same purposes set forth in Paragraphs 63 and 64, Individual Respondents state that the Corporate Respondent year after year during this period notified Complainant of its sales of this product on Complainant's own government forms. No representative of EPA and/or MDA ever notified Corporate Respondent of the cancellation until October 8, 2008.

66. Each Count fails to state a claim against the Individual Respondents. No Count alleges a sale or distribution by either of the Individual Respondents.

67. The Individual Respondents in this case were simply acting within the scope of their employment and took no actions with regard to these sales or distributions which impose any individual liability on Keith or Karlan.

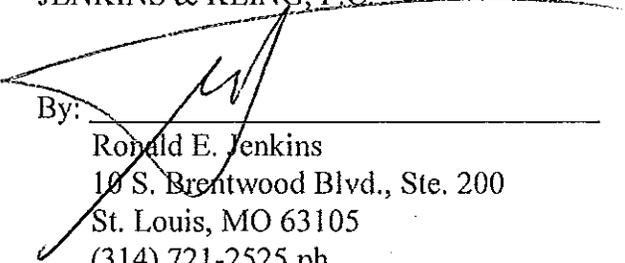
68. The proposed penalty against the Individual Respondents is not appropriate in light of the gross revenue the Company received from these sales, the total gross revenue of the Company as a whole, and the fact that Individual Respondents made nothing from the sales (e.g. commissions).

69. As set forth in their tax returns which have previously been provided to Complainant, Individual Respondents have no ability to pay any fine anywhere near this magnitude.

70. As to Individual Respondent Karlan and Counts 5, he was no longer employed on September 29, 2008.

Respectfully submitted,

JENKINS & KLING, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

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this 23rd day of August, 2010.

