

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

09 OCT 2009
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2008-0035
)
FRM Chem, Inc.) COMPLAINANT'S MOTION FOR LEAVE
Washington, Missouri.) TO AMEND THE COMPLAINT AND
) CONSOLIDATE MATTERS
)
Respondent)

COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT
AND CONSOLIDATE MATTERS

Pursuant to Rule 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant, the United States Environmental Protection Agency, Region 7 (EPA) seeks leave of the Court to amend the Administrative Complaint filed by EPA on June 26, 2009. The proposed Amended Complaint is attached. In support of this Motion, Complainant avers the following:

Background

I. The Complaint in the above-captioned matter was filed June 26, 2009. The Complaint contains fifty-six counts, alleging multiple violations by Respondent, FRM Chem, Inc. (FRM), of Sections 12(a)(1)(A) and 12(A)(1)(E) of the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136j(a)(1)(A) and (E). Each of the fifty-six counts alleges that Respondent sold or distributed or held for sale or distribution one of two pesticides whose registration had been cancelled or which was misbranded. The pesticides alleged to have been sold or distributed were the products FRM CHLOR 1250 and STERI-DINE DISINFECTANT, both produced by FRM, and the registrations for each which had been cancelled in 1995. The proposed penalty in the original Complaint was \$364,000.

- II. Respondent FRM sent a document Complainant construed as an Answer and which was filed with EPA's Regional Hearing Clerk on July 27, 2009.
- III. A Complaint in the matter of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, was filed June 26, 2009. This Complaint contains four counts, alleging that the Respondent, Advanced Products Technology, Inc. (APT) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the four counts alleges that APT sold or distributed the cancelled product STERI-DINE DISINFECTANT, produced by Respondent FRM. The proposed penalty in the original Complaint against APT is \$26,000.
- IV. APT sent a document Complainant construed as an Answer and which was filed with EPA's Regional Hearing Clerk on July 27, 2009.
- V. A Complaint in the matter of Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041, was filed September 23, 2009. This Complaint contains seven counts, alleging that the Respondent, Synisys, Inc. (Synisys) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the seven counts alleges that Synisys sold

or distributed the cancelled product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. The proposed penalty in the original Complaint against Synisys is \$45,500.

- VI. A Complaint in the matter of Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042, was filed September 23, 2009. This Complaint contains five counts, alleging that the Respondent, Custom Compounders, Inc. (CCI) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the five counts alleges that CCI sold or distributed the cancelled product FRM CHLOR 1250. The proposed penalty in the original Complaint against CCI is \$32,500.

Issues for Amended Complaint and Consolidation of Matters

- VII. At least eight corporations, including FRM, APT, Synisys, and CCI, in addition to Industrial Specialties, Inc., Pool Solutions Midwest, Inc., V.L. Clark Chemical, Inc., and Chemicals, Pharmaceuticals & Intermediates, Inc. all list a facility located at 50 and/or 60 Highline Drive in Union, Missouri as their principal place of business.
- VIII. Respondent FRM is a Missouri company incorporated on October 28, 1968, and administratively dissolved by the Missouri Secretary of State July 1, 2008, for failure to file an annual report.
- IX. In a Final Decision and Order issued June 13, 2006, the EPA Environmental Appeals Board determined that Respondent FRM had annual gross receipts in excess of \$1,000,000 and assessed an administrative penalty of \$16,500 against Respondent FRM in *In the Matter of FRM Chem Inc., a/k/a Industrial Specialties* in EAB FIFRA Appeal No. 05-01. Multiple attempts were made by EPA to collect the penalty in August, October, and November of 2006, and receipt of the certified letters by FRM's

owner and corporate President Raymond Kastendieck was documented by EPA. To date, Respondent FRM has not paid the penalty assessed in this matter.

- X. Corporate officers for FRM Chem., Inc. listed on the annual registration report filed January 30, 2007, were: President, Raymond E. Kastendieck; Vice-President, Keith G. Kastendieck; Secretary, Ann P. Kastendieck; and Treasurer, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the annual registration report filed January 30, 2007. Karlan Kastendieck served as the sales manager of FRM, and Keith Kastendieck served as the plant manager of FRM.
- XI. APT and Synisys, Inc., are both Missouri companies incorporated by Ann Kastendieck on December 29, 2003. Corporate officers for both corporations are: President, Raymond E. Kastendieck, and Secretary, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the most recent annual registration report for each company, each of which was filed with the Missouri Secretary of State on April 29, 2009.
- XII. Custom Compounders, Inc., is a Georgia company incorporated November 5, 1986. Corporate officers for Custom Compounders, Inc., are: Chief Executive Officer, Raymond Kastendieck; Chief Financial Officer, Karlan Kastendieck; and Secretary, A. P. Kastendieck.
- XIII. Keith G. Kastendieck is the manager and part owner of APT, Synisys, Inc., and Custom Compounders, Inc.
- XIV. Karlan Kastendieck is the sales manager for Respondent FRM and APT.

- XV. On December 21, 2005, a representative for the Missouri Department of Agriculture (MDA) performed an inspection of Respondent FRM's facility at 50 Highline Drive in Union, Missouri, interviewing Karlan Kastendieck, the sales manager for FRM and APT and collecting shipping records and labels documenting that FRM was holding for sale or distribution the unregistered pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XVI. On or about May 20, 2008, EPA issued Request For Information Letters regarding sales, distribution, and shipments of the cancelled pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT to multiple customers of Respondent FRM. Several customers responded to the information request and supplied documentation of multiple sales or distributions by Respondent FRM of FRM CHLOR 1250 and STERI-DINE DISINFECTANT, in addition to four sales or distributions by APT in 2007 of the FRM product STERI-DINE DISINFECTANT to L.W. Chemicals, Inc., of Mt. Olive, Illinois.
- XVII. On October 8, 2008, representatives of MDA and EPA performed an inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounders, Inc., and Synisys, Inc., at the facility located at 50 and 60 Highline Drive in Union, Missouri.
- XVIII. On October 8, 2008, Keith G. Kastendieck, the corporate Vice President and manager for Respondent FRM, was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XIX. On October 8, 2008, Keith G. Kastendieck, in his capacity as Vice-President of

Respondent FRM and as owner and manager for APT, Synisys, Inc., and Custom Compounders, Inc., informed inspectors for the MDA and EPA that “we no longer produce” either of the two pesticides FRM CHLOR 1250 or STERI-DINE DISINFECTANT, and that “we do not have any inventory for STERI-DINE or FRM CHLOR 1250.” He further stated that “[w]e last produced STERIDINE April ‘06 and we last produced FRM CHLOR 1250 Dec. ‘06,” and that “we are not presently producing, labeling, selling, or distributing these products.” He also claimed that FRM Chem, Inc. had ceased operation effective December 31, 2006.

- XX. Documents collected by MDA and EPA in the October 8, 2008, inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounders, Inc., and Synisys, Inc., detail sales or distributions by Custom Compounders, Inc., of FRM CHLOR 1250 to the Franklin County Humane Society in Union, Missouri, on or about December 31, 2007, May 22, 2008, June 19, 2008, July 24, 2008, and September 29, 2008.
- XXI. On July 15, 2009, EPA Region 7 received documentation in the form of multiple invoices on FRM letterhead detailing sales or distributions of the unregistered pesticide product FRM CHLOR 1250 to McFleeg, Inc., in Watertown, South Dakota, on or about January 8, 2007, March 28, 2007, and January 21, 2008. At the bottom of each invoice is an instruction to “Please Make Check Payable to Synisys, Inc.”
- XXII. The March 28, 2007, and the January 21, 2008, sales or distributions of FRM CHLOR 1250 to McFleeg, Inc., documented by the invoices referenced in the preceding paragraph, correspond respectively to Counts 5 and 6 of the June 26, 2009, Complaint

filed against FRM, and also to Counts 2 and 3 of the September 23, 2009, Complaint filed against Synisys.

- XXIII. On August 7, 2009, EPA Region 7 received documentation that containers of the FRM CHLOR 1250 product sold or distributed to McFleeg, Inc. had been manufactured on March 28, 2007, and January 17, 2008, contradicting statements by Keith G. Kastendieck to MDA and EPA on October 8, 2008, that FRM Chlor 1250 had not been manufactured since December 2006. Photographs of the product label identify the manufacturer as Respondent FRM Chem, Inc., of Washington, Missouri.
- XXIV. In addition to the multiple sales of FRM CHLOR 1250, the invoices received on July 15, 2009, also document sales of the products Cir-Clean, Mech II, FRM-X Teat Dip, Udderway, FRM Dine Teat Dip, and Prevent, all of which are identified on their labels as having been produced by Respondent FRM, and also of the product Gain SVP, which is identified on its label as having been produced by APT. The most recent sales to McFleeg, Inc. (of FRM's product Cir-Clean and of APT's product Gain SVP) are documented by an FRM Chem., Inc. invoice dated February 16, 2009, which contains the instruction "Please Make Check Payable to Synisys, Inc."
- XXV. On August 10, 2009, EPA Region 7 received documentation in the form of sales invoices on FRM letterhead that, on at least four occasions (on or about February 6, 2007, February 13, 2008, October 13, 2008, and November 26, 2008), sales or distributions of the unregistered pesticide product FRM Chlor 1250 were made to Graber Equipment in Odon, Indiana. The latter two sales or distributions occurred after EPA Region 7's October 8, 2008, service to Respondent FRM of the order issued

pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. At the bottom of each invoice is an instruction to “Please Make Check Payable to Synisys, Inc.”

XXVI. Complainant seeks the following changes in the amended Complaint:

- A. Complainant seeks to consolidate this matter with the matters of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042.
- B. Complainant seeks to add two counts to the Amended Complaint alleging that on or about October 13, 2008, and on or about November 26, 2008, Respondents sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment in Odon, Indiana, in violation of an order issued to Respondent FRM on October 8, 2008, pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticide FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.
- C. Complainant also seeks leave to amend the “Statutory & Regulatory Background” and “Factual Allegations” sections of the Complaint to incorporate law and factual allegations relevant to the proposed additional counts under XXVI.B above.
- D. Complainant also seeks leave to amend its reference in the Complaint to Respondent FRM’s address as 50 Highline Drive in Washington, Missouri (the address stated in corporate filings with the Missouri Secretary of State), changing the address to 50

Highline Drive in Union, Missouri 63084, in recognition of the fact that the U.S. Post Offices in Union and Washington, Missouri have each informed Complainant that the latter address is the correct one for Respondent's facility, though Respondent FRM maintains a Post Office Box address in Washington, Missouri.

Controlling Legal Authority

- XXVII. Pursuant to 40 C.F.R. § 22.14, the Complainant may amend the Complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer.
- XXVIII. Pursuant to 40 C.F.R. § 22.12, the Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to the Consolidated Rules where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.
- XXIX. It is a general legal principle that "administrative pleadings are liberally construed and easily amended" and permission to amend will usually be freely given. Yaffe Iron & Metal Co., Inc. v. EPA, 774 F.2d 1008, 1012 (10th Cir. 1985). If leave to amend is to be denied, it must generally be shown that the amendment will result in prejudice to the opposing party and that the prejudice would constitute a serious disadvantage that goes beyond mere inconvenience. In re: Port of Oakland, MPRSA Appeal No. 91-1 (EAB, August 5, 1992).
- XXX. The facts and circumstances surrounding the violations identified as a result of information gathered in July and August of 2009 are nearly identical to those surrounding the violations already alleged in the Complaint. A denial of leave to

amend the Complaint, thus creating the need to pursue additional violations in one or more separate proceedings, will result in duplication of efforts by Complainant, Respondent, and the Court and the inefficient use of the administrative process.

XXXI. The above-captioned matter shares common questions of fact and law with the matters of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042. The four corporations share common officers, directors, and supervisors, engage in substantially the same business operations, share the same principal place of business, and are charged with similar violations of selling one or both of the two FRM-produced unregistered pesticides, FRM CHLOR 1250 and STERI-DINE DISINFECTANT to several common customers. Furthermore, FIFRA 14(a)(4), 7 U.S.C. § 136(a)(4), states that a respondent's size of business shall be considered in determining the amount of a penalty for a FIFRA violation. Given this factor in calculating liability, the ultimate penalty for which the four Respondents may be liable, collectively or individually, may be contingent on whether one or more of the other three corporations is deemed a corporate successor of FRM or if evidence gathered via discovery establishes grounds for piercing of the corporate veil. This factor, along with the other facts mentioned above, militates in favor of consolidating the four matters in the interest of efficiency.

XXXII. This amendment is in the public interest and will promote the efficient and expeditious disposition of this matter.

XXXIII. The proposed amended complaint is included with this motion as an attachment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CR Dudding", written over a horizontal line.

Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101
(913) 551-7524

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2009, I hand-delivered the original and one true copy of this Motion for Leave to Amend the Complaint, to the Regional Hearing Clerk, and sent one true and correct copy:

via Certified Mail, return receipt requested, to:

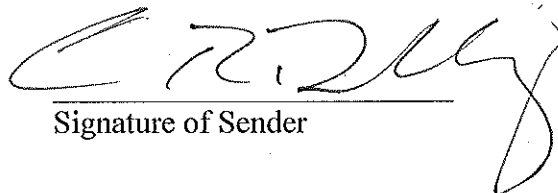
Raymond Kastendieck
Registered Agent for
FRM Chem, Inc.
3007 Brighton Lane
Washington, MO 63090

Robert Sichel
Registered Agent for Custom Compounds, Inc.
750 Hammond Drive, Bldg 9
Atlanta, Georgia 30328.

Ann P. Kastendieck
Reg. Agent for Synisys, Inc. and Advanced Products Technology, Inc.
P.O. Box 1656
Washington, MO 63090

via Federal Express, to:

Judge Barbara Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street
Suite 350
Washington, D.C. 20005



Signature of Sender

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2008-0035
)
FRM Chem, Inc.) FIRST AMENDED COMPLAINT
Union, Missouri) AND NOTICE OF OPPORTUNITY
) FOR HEARING
)
)
Respondent)

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. The Respondent is FRM Chem, Inc., a pesticide producer and distributor, located at 50-60 Highline Drive, Union, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. §136(s).

Section III

Statutory & Regulatory Background

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. 40 C.F.R. § 152.10 states that certain substances otherwise exempt from regulation as pesticides, including bleach and cleaning agents, are considered pesticides if a pesticidal claim is made on their labeling or in connection with their sale and distribution.

8. 40 C.F.R. § 152.15(a)(1) states that a product is considered to be for a pesticidal purpose and thus to be a pesticide requiring registration if the person who distributes or sells the product claims, states or implies, by labeling or otherwise, that it can or should be used to prevent, destroy, repel, or mitigate a pest.

9. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines the term “antimicrobial pesticide” to mean a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or to protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

12. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

13. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

15. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading.

16. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

17. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a) provides that where there is reason to believe that a pesticide is in violation of any of the provisions of FIFRA, or that such pesticide has been or is intended to be distributed or sold in violation of such provisions, or when the registration of the pesticide has been canceled or suspended, the Administrator may issue a written or printed “stop sale, use, or removal” order to any person who owns, controls, or has custody of such pesticide, and after receipt of such order no person shall sell, use, or remove the pesticide described in the order except in accordance with the provisions of the order.

18. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

Section IV

Factual Allegations

19. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to Intercon Chemical Company (the registrant) a pesticide known as STERI-DINE DISINFECTANT, EPA Registration Number (EPA Reg. No.) 48211-70. Thereafter, in accordance with 40 C.F.R. Section 152.132, the registrant entered into an agreement with the Respondent for Respondent to supplementally distribute the registrant’s product under the name of STERI-DINE DISINFECTANT, using EPA Reg. No. 48211-70-10366. On July 19, 1995, the registration of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70, was cancelled as were all supplemental distribution agreements. Sales of existing stock by the registrant and supplemental distributors were prohibited after January 15, 1996.

20. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to the registrant a pesticide known as CHLOR 1250, EPA Reg. No. 48211-20001. Thereafter, in accordance with 40 C.F.R. Section 152.132, the registrant entered into an agreement with the Respondent for Respondent to supplementally distribute the registrant's product under the name of FRM CHLOR 1250, using EPA Reg. No. 48211-20001-10366. On July 19, 1995, the registration of CHLOR 1250, EPA Reg. No. 48211-20001, was cancelled, as were all supplemental distribution agreements. Sales of existing stock by the registrant and supplemental distributors were prohibited after January 15, 1996.

21. On or about December 21, 2005, December 28, 2005, and October 8, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at Respondent's facility in Union, Missouri, to determine the status of Respondent's compliance with FIFRA.

22. During the inspections referenced in paragraph 21, the MDA representative documented that Respondent was holding for sale or distribution STERI-DINE DISINFECTANT, the cancelled pesticide product referenced in paragraph 19.

23. During the inspections referenced in paragraph 21, the MDA representative documented that Respondent was holding for sale or distribution FRM CHLOR 1250, the cancelled pesticide product referenced in paragraph 20.

24. On or about May 20, 2008, EPA issued Request For Information Letters regarding sales, distribution, and shipments of the cancelled pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-1036620 to the following customers of Respondent: McFleeg, Inc., Watertown, South Dakota; Allen's Sales & Service, Ottawa, Kansas; Dairy Concepts, Lesueur, Minnesota; L W Chemicals, Mt. Olive, Illinois; Preston Dairy Supply, Monticello, Iowa; Tony Howell Equity Group, East Gadsden, Alabama; and, Billy Palmer Equity Group, East Gadsden, Alabama. In or about June and/or July of 2008 these customers of the Respondent documented multiple sales by the Respondent of the cancelled pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

25. On October 8, 2008, Keith G. Kastendieck, Respondent's corporate vice-president and manager, was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

26. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that Respondent had not produced, sold, or distributed either of the two pesticides since December 2006, and that FRM Chem, Inc. had ceased operation effective December 31, 2006.

27. On or about July 10, 2009, EPA issued Request For Information Letters regarding sales, distribution, and shipments of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to several customers of Respondent, including, McFleeg, Inc., of Watertown, South Dakota and Graber Equipment, of Oden, Indiana. Responses were received by EPA in July and/or August 2009, documenting multiple sales or distributions of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, all after December 31, 2006, and including at least two documented sales or distributions of the product that occurred after the October 8, 2008, service of the order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

Violations

28. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

Count 1

29. The facts stated in paragraphs 19 through 28 are realleged and incorporated as if fully stated herein.

30. On or about December 21, 2005, Respondent held for sale or distribution a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

31. At the time the Respondent was documented as holding for sale or distribution STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for sale or distribution a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

33. The STERI-DINE DISINFECTANT product label bore the false EPA Registration Number 48211-70-10366.

34. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a misbranded pesticide.

35. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 29 through 34, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 2

36. The facts stated in paragraphs 19 through 35 are realleged and incorporated as if fully stated herein.

37. On or about December 21, 2005, Respondent held for sale or distribution a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

38. At the time the Respondent was documented as holding for sale or distribution FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

39. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for sale or distribution a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

40. The FRM CHLOR 1250 product label for the products documented bore the false EPA Registration Number 48211-20001-10366.

41. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a misbranded pesticide.

42. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 36 through 41, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 3-6 – Sales/Distributions to McFleeg, Inc.

Count 3

43. The facts stated in paragraphs 19 through 42 are realleged and incorporated as if fully stated herein.

44. On or about November 21, 2005, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

45. On the date of the sale and/or distribution referenced in paragraph 44, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

46. For the sale or distribution referenced in paragraph 44, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

47. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 43 through 46, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 4

48. The facts stated in paragraphs 19 through 47 are realleged and incorporated as if fully stated herein.

49. On or about July 5, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

50. On the date of the sale and/or distribution referenced in paragraph 49, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

51. For the sale or distribution referenced in paragraph 49, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

52. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 48 through 51, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 5

53. The facts stated in paragraphs 19 through 52 are realleged and incorporated as if fully stated herein.

54. On or about April 1, 2007, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

55. On the date of the sale and/or distribution referenced in paragraph 54, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

56. For the sale or distribution referenced in paragraph 54, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

57. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 53 through 56, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 6

58. The facts stated in paragraphs 19 through 57 are realleged and incorporated as if fully stated herein.

59. On or about January 21, 2008, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

60. On the date of the sale and/or distribution referenced in paragraph 59, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

61. For the sale or distribution referenced in paragraph 59, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

62. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 58 through 61, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 7 – Sale/Distribution to Allen’s Sales & Service

Count 7

63. The facts stated in paragraphs 19 through 62 are realleged and incorporated as if fully stated herein.

64. On or about May 18, 2005, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Allen’s Sales & Service, Ottawa, Kansas.

65. On the date of the sale and/or distribution referenced in paragraph 64, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

66. For the sale or distribution referenced in paragraph 64, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

67. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 63 through 66, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 8-11 – Sales/Distributions to Funk Sales & Service

Count 8

68. The facts stated in paragraphs 19 through 67 are realleged and incorporated as if fully stated herein.

69. On or about January 3, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

70. On the date of the sale and/or distribution referenced in paragraph 69, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

71. For the sale or distribution referenced in paragraph 69, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

72. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 68 through 71, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 9

73. The facts stated in paragraphs 19 through 72 are realleged and incorporated as if fully stated herein.

74. On or about June 19, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

75. On the date of the sale and/or distribution referenced in paragraph 74, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

76. For the sale or distribution referenced in paragraph 74, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

77. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 73 through 76, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 10

78. The facts stated in paragraphs 19 through 77 are realleged and incorporated as if fully stated herein.

79. On or about July 26, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

80. On the date of the sale and/or distribution referenced in paragraph 79, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

81. For the sale or distribution referenced in paragraph 79, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

82. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 78 through 81, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 11

83. The facts stated in paragraphs 19 through 82 are realleged and incorporated as if fully stated herein.

84. On or about December 12, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

85. On the date of the sale and/or distribution referenced in paragraph 84, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

86. For the sale or distribution referenced in paragraph 84, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

87. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 83 through 86, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 12-16 -- Sales/Distributions to Dairy Concepts

Count 12

88. The facts stated in paragraphs 19 through 87 are realleged and incorporated as if fully stated herein.

89. On or about January 9, 2006, Respondent sold or distributed and shipped a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

90. On the date of the sale and/or distribution referenced in paragraph 89, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

91. For the sale or distribution referenced in paragraph 89, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

92. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 88 through 91, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 13

93. The facts stated in paragraphs 19 through 92 are realleged and incorporated as if fully stated herein.

94. On or about February 14, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

95. On the date of the sale and/or distribution referenced in paragraph 94, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

96. For the sale or distribution referenced in paragraph 94, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

97. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 93 through 96, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 14

98. The facts stated in paragraphs 19 through 97 are realleged and incorporated as if fully stated herein.

99. On or about July 10, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

100. On the date of the sale and/or distribution referenced in paragraph 99, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

101. For the sale or distribution referenced in paragraph 99, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

102. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 98 through 101, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 15

103. The facts stated in paragraphs 19 through 102 are realleged and incorporated as if fully stated herein.

104. On or about September 15, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

105. On the date of the sale and/or distribution referenced in paragraph 104, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

106. For the sale or distribution referenced in paragraph 104, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

107. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136i, and based on the facts stated in paragraphs 103 through 106, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 16

108. The facts stated in paragraphs 19 through 107 are realleged and incorporated as if fully stated herein.

109. On or about December 13, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

110. On the date of the sale and/or distribution referenced in paragraph 109, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

111. For the sale or distribution referenced in paragraph 109, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

112. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 108 through 111, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 17-25 - Sales/Distributions to L W Chemicals

Count 17

113. The facts stated in paragraphs 19 through 112 are realleged and incorporated as if fully stated herein.

114. On or about August 3, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

115. On the date of the sale and/or distribution referenced in paragraph 114, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

116. For the sale or distribution referenced in paragraph 114, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

117. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 113 through 116, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 18

118. The facts stated in paragraphs 19 through 117 are realleged and incorporated as if fully stated herein.

119. On or about October 4, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

120. On the date of the sale and/or distribution referenced in paragraph 119, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

121. For the sale or distribution referenced in paragraph 119, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

122. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 118 through 121, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 19

123. The facts stated in paragraphs 19 through 122 are realleged and incorporated as if fully stated herein.

124. On or about October 28, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

125. On the date of the sale and/or distribution referenced in paragraph 124, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

126. For the sale or distribution referenced in paragraph 124, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

127. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 123 through 126, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 20

128. The facts stated in paragraphs 19 through 127 are realleged and incorporated as if fully stated herein.

129. On or about January 4, 2005, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

130. On the date of the sale and/or distribution referenced in paragraph 129, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

131. For the sale or distribution referenced in paragraph 129, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

132. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 128 through 131, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 21

133. The facts stated in paragraphs 19 through 132 are realleged and incorporated as if fully stated herein.

134. On or about October 4, 2005, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

135. On the date of the sale and/or distribution referenced in paragraph 134, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

136. For the sale or distribution referenced in paragraph 134, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

137. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 133 through 136, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 22

138. The facts stated in paragraphs 19 through 137 are realleged and incorporated as if fully stated herein.

139. On or about October 25, 2005, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

140. On the date of the sale and/or distribution referenced in paragraph 139, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

141. For the sale or distribution referenced in paragraph 139, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

142. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 138 through 141, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 23

143. The facts stated in paragraphs 19 through 142 are realleged and incorporated as if fully stated herein.

144. On or about April 4, 2006, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

145. On the date of the sale and/or distribution referenced in paragraph 144, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

146. For the sale or distribution referenced in paragraph 144, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

147. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 143 through 146, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 24

148. The facts stated in paragraphs 19 through 147 are realleged and incorporated as if fully stated herein.

149. On or about October 3, 2006, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

150. On the date of the sale and/or distribution referenced in paragraph 149, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

151. For the sale or distribution referenced in paragraph 149, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

152. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 148 through 151, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 25

153. The facts stated in paragraphs 19 through 152 are realleged and incorporated as if fully stated herein.

154. On or about October 30, 2006, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

155. On the date of the sale and/or distribution to L W Chemicals referenced in paragraph 154, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

156. For the sale or distribution referenced in paragraph 154, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

157. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 153 through 156, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 26-27

Sales/Distributions to Preston Dairy Supply

Count 26

158. The facts stated in paragraphs 19 through 157 are realleged and incorporated as if fully stated herein.

159. On or about March 30, 2005, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Preston Dairy Supply, Monticello, Iowa.

160. On the date of the sale and/or distribution referenced in paragraph 159, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

161. For the sale or distribution referenced in paragraph 159, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

162. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 158 through 161, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 27

163. The facts stated in paragraphs 19 through 162 are realleged and incorporated as if fully stated herein.

164. On or about July 5, 2005, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Preston Dairy Supply, Monticello, Iowa.

165. On the date of the sale and/or distribution referenced in paragraph 164, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

166. For the sale or distribution referenced in paragraph 164, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

167. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 163 through 166, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 28-31 - Sales/Distributions to Tony Howell Equity Group

Count 28

168. The facts stated in paragraphs 19 through 167 are realleged and incorporated as if fully stated herein.

169. On or about July 7, 2004, Respondent sold or distributed and shipped a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell Equity Group, East Gadsden, Alabama.

170. On the date of the sale and/or distribution referenced in paragraph 169, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

171. For the sale or distribution referenced in paragraph 169, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

172. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 168 through 171, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 29

173. The facts stated in paragraphs 19 through 172 are realleged and incorporated as if fully stated herein.

174. On or about August 4, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell Equity Group, East Gadsden, Alabama.

175. On the date of the sale and/or distribution referenced in paragraph 174, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

176. For the sale or distribution referenced in paragraph 174, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

177. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 173 through 176 it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 30

178. The facts stated in paragraphs 19 through 177 are realleged and incorporated as if fully stated herein.

179. On or about October 4, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell Equity Group, East Gadsden, Alabama.

180. On the date of the sale and/or distribution to referenced in paragraph 179, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

181. For the sale or distribution referenced in paragraph 179, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

182. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 178 through 181, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 31

183. The facts stated in paragraphs 19 through 182 are realleged and incorporated as if fully stated herein.

184. On or about November 1, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell Equity Group, East Gadsden, Alabama.

185. On the date of the sale and/or distribution referenced in paragraph 184, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

186. For the sale or distribution referenced in paragraph 184, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

187. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 183 through 186, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 32 – Sale/Distribution to Charles Rademacher

Count 32

188. The facts stated in paragraphs 19 through 187 are realleged and incorporated as if fully stated herein.

189. On or about January 11, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Charles Rademacher, Owensville, Missouri.

190. On the date of the sale and/or distribution referenced in paragraph 189, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

191. For the sale or distribution referenced in paragraph 189, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

192. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 188 through 191, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 33-41 -- Sales/Distributions to Riegel Farms

Count 33

193. The facts stated in paragraphs 19 through 192 are realleged and incorporated as if fully stated herein.

194. On or about February 13, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

195. On the date of the sale and/or distribution referenced in paragraph 194, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

196. For the sale or distribution referenced in paragraph 194, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

197. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 193 through 196, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 34

198. The facts stated in paragraphs 19 through 197 are realleged and incorporated as if fully stated herein.

199. On or about March 10, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

200. On the date of the sale and/or distribution referenced in paragraph 199, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

201. For the sale or distribution referenced in paragraph 199, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

202. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 198 through 201, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 35

203. The facts stated in paragraphs 19 through 202 are realleged and incorporated as if fully stated herein.

204. On or about April 4, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

205. On the date of the sale and/or distribution referenced in paragraph 204, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

206. For the sale or distribution referenced in paragraph 204, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

207. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 203 through 206, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 36

208. The facts stated in paragraphs 19 through 207 are realleged and incorporated as if fully stated herein.

209. On or about June 2, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

210. On the date of the sale and/or distribution referenced in paragraph 209, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

211. For the sale or distribution referenced in paragraph 209, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

212. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 208 through 211, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 37

213. The facts stated in paragraphs 19 through 212 are realleged and incorporated as if fully stated herein.

214. On or about June 23, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

215. On the date of the sale and/or distribution referenced in paragraph 214, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

216. For the sale or distribution referenced in paragraph 214, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

217. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 213 through 216, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 38

218. The facts stated in paragraphs 19 through 217 are realleged and incorporated as if fully stated herein.

219. On or about July 31, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

220. On the date of the sale and/or distribution referenced in paragraph 219, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

221. For the sale or distribution referenced in paragraph 219, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

222. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 218 through 221, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 39

223. The facts stated in paragraphs 19 through 222 are realleged and incorporated as if fully stated herein.

224. On or about September 14, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

225. On the date of the sale and/or distribution referenced in paragraph 224, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

226. For the sale or distribution referenced in paragraph 224, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

227. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 223 through 226, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 40

228. The facts stated in paragraphs 19 through 227 are realleged and incorporated as if fully stated herein.

229. On or about October 9, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

230. On the date of the sale and/or distribution referenced in paragraph 229, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

231. For the sale or distribution referenced in paragraph 229, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

232. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 228 through 231, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 41

233. The facts stated in paragraphs 19 through 232 are realleged and incorporated as if fully stated herein.

234. On or about November 22, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

235. On the date of the sale and/or distribution referenced in paragraph 234, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

236. For the sale or distribution referenced in paragraph 234, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

237. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 233 through 236, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 42-52 – Sales/Distributions to Billy Palmer Equity Group

Count 42

238. The facts stated in paragraphs 19 through 237 are realleged and incorporated as if fully stated herein.

239. On or about July 31, 2004, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

240. On the date of the sale and/or distribution referenced in paragraph 239, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

241. For the sale or distribution referenced in paragraph 239, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose

registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

242. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 238 through 241, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 43

243. The facts stated in paragraphs 19 through 242 are realleged and incorporated as if fully stated herein.

244. On or about January 4, 2005, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

245. On the date of the sale and/or distribution referenced in paragraph 244, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

246. For the sale or distribution referenced in paragraph 244, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

247. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 243 through 246, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 44

248. The facts stated in paragraphs 19 through 247 are realleged and incorporated as if fully stated herein.

249. On or about August 3, 2005, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

250. On the date of the sale and/or distribution referenced in paragraph 249, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

251. For the sale or distribution referenced in paragraph 249, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

252. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 248 through 251, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 45

253. The facts stated in paragraphs 19 through 252 are realleged and incorporated as if fully stated herein.

254. On or about October 6, 2005, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

255. On the date of the sale and/or distribution referenced in paragraph 254, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

256. For the sale or distribution referenced in paragraph 254, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

257. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 253 through 256, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 46

258. The facts stated in paragraphs 19 through 257 are realleged and incorporated as if fully stated herein.

259. On or about April 5, 2006, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

260. On the date of the sale and/or distribution referenced in paragraph 259, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

261. For the sale or distribution referenced in paragraph 259, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

262. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 258 through 261, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 47

263. The facts stated in paragraphs 19 through 262 are realleged and incorporated as if fully stated herein.

264. On or about October 5, 2006, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

265. On the date of the sale and/or distribution referenced in paragraph 264, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

266. For the sale or distribution referenced in paragraph 264, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

267. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 263 through 266, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 48

268. The facts stated in paragraphs 19 through 267 are realleged and incorporated as if fully stated herein.

269. On or about November 2, 2006, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

270. On the date of the sale and/or distribution referenced in paragraph 269, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

271. For the sale or distribution referenced in paragraph 269, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

272. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 268 through 271, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 49

273. The facts stated in paragraphs 19 through 272 are realleged and incorporated as if fully stated herein.

274. On or about September 4, 2007, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

275. On the date of the sale and/or distribution referenced in paragraph 274, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

276. For the sale or distribution referenced in paragraph 274, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

277. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 273 through 276, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 50

278. The facts stated in paragraphs 19 through 277 are realleged and incorporated as if fully stated herein.

279. On or about October 3, 2007, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

280. On the date of the sale and/or distribution referenced in paragraph 279, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

281. For the sale or distribution referenced in paragraph 279, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

282. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 278 through 281, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 51

283. The facts stated in paragraphs 19 through 282 are realleged and incorporated as if fully stated herein.

284. On or about December 20, 2007, Respondent sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

285. On the date of the sale and/or distribution referenced in paragraph 284, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

286. For the sale or distribution referenced in paragraph 284, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

287. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 283 through 286, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 52

288. The facts stated in paragraphs 19 through 287 are realleged and incorporated as if fully stated herein.

289. In January 2008, Respondent sold or distributed a quantity of the product STERI-DINE[®] DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer Equity Group, East Gadsden, Alabama.

290. On the date of the sale and/or distribution referenced in paragraph 289, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

291. For the sale or distribution referenced in paragraph 289, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

292. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 288 through 291, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Counts 53-56 – Sales/Distributions to Weir Farm Supply

Count 53

293. The facts stated in paragraphs 19 through 292 are realleged and incorporated as if fully stated herein.

294. On or about February 22, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

295. On the date of the sale and/or distribution referenced in paragraph 294, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

296. For the sale or distribution referenced in paragraph 294, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

297. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 293 through 296, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 54

298. The facts stated in paragraphs 19 through 297 are realleged and incorporated as if fully stated herein.

299. On or about April 25, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

300. On the date of the sale and/or distribution referenced in paragraph 299, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

301. For the sale or distribution referenced in paragraph 299, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

302. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 298 through 301, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 55

303. The facts stated in paragraphs 19 through 302 are realleged and incorporated as if fully stated herein.

304. On or about September 22, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

305. On the date of the sale and/or distribution referenced in paragraph 304, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

306. For the sale or distribution referenced in paragraph 304, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

307. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 303 through 306, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 56

308. The facts stated in paragraphs 19 through 307 are realleged and incorporated as if fully stated herein.

309. On or about December 11, 2006, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

310. On the date of the sale and/or distribution referenced in paragraph 309, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

311. For the sale or distribution referenced in paragraph 309, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

312. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 308 through 311, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 57-58 – Violations of a Stop Sale, Use, or Removal Order

Count 57

313. The facts stated in paragraphs 19 through 312 are realleged and incorporated as if fully stated herein.

314. On October 8, 2008, Respondent was served by an EPA Inspector with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERIL-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

315. On or about October 13, 2008, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment, Odon, Indiana.

316. For the sale or distribution referenced in paragraph 315, Respondent violated Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), by selling or distributing a pesticide in violation of an order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

317. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 313 through 316, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 58

318. The facts stated in paragraphs 19 through 317 are realleged and incorporated as if fully stated herein.

319. On October 8, 2008, Respondent was served by an EPA Inspector with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERIL-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

320. On or about November 26, 2008, Respondent sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment, Odon, Indiana.

321. For the sale or distribution referenced in paragraph 320, Respondent violated Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), by selling or distributing a pesticide in violation of an order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

322. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 318 through 321, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Section V

Total Proposed Penalty

323. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of

1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty for each violation. For any such violation occurring between January 30, 1997, and March 15, 2004, the maximum statutory penalty per violation is Five Thousand Five Hundred Dollars (\$5,500). For any such violation occurring on or after March 15, 2004, through January 12, 2009, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). EPA proposes to assess a total civil penalty of Three Hundred and Seventy-Seven Thousand Dollars (\$377,000) against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

324. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

325. For purposes of calculating the proposed penalty, Respondent was placed in Category I size of business (total business revenues in excess of \$1,000,000 per year) when Complainant was unable to obtain specific information as to Respondent's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

326. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

327. The proposed penalty constitutes a demand only if Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.

328. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought to the attention of Complainant at the earliest opportunity in this proceeding.

329. Payment of the total penalty - \$377,000 - may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

330. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and a copy to:

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

NOTICE OF OPPORTUNITY FOR HEARING

Section VI

Answer and Request for Hearing

331: Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file a written answer and request for hearing with:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained

in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. The circumstances or arguments that are alleged to constitute the grounds of defense;
- B. The facts that Respondent intends to place at issue; and
- C. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

332. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (copy enclosed).

333. If Respondent fails to file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

334. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

Section VII

Settlement Conference

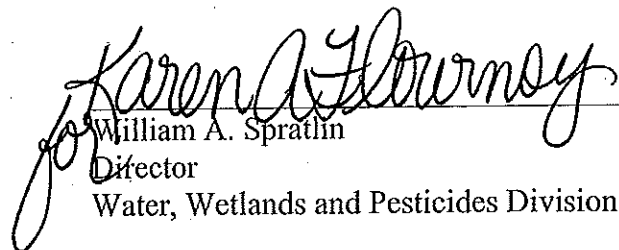
335. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

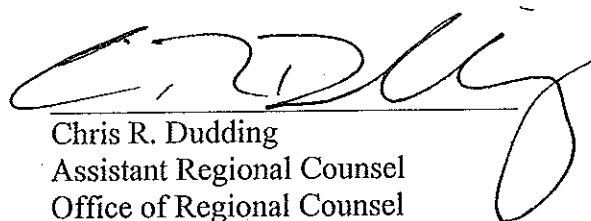
Chris R. Dudding
Assistant Regional Counsel
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7524.

336. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

337. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

10-1-09
Date


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 1	Count 2	Count 3	Count 4
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A) Sec. 12(a)(1)(E)	Sec. 12(a)(1)(A) Sec. 12(a)(1)(E)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	IAA, IEA, IEE, IEF, IEG	IAA, IEA, IEE, IEF, IEG	IAA	IAA
3. Violation Level	2, 2, 3, 2, 2	2, 2, 3, 2, 2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 5	Count 6	Count 7	Count 8
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	1	1	1	1
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

**FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference**

RESPONDENT: FRM Chem, Inc.
ADDRESS: P.O. Box 207
Highway 47 South
Washington, MO 63090

Prepared By: Mark K. Leshner
Date: 08/20/09

	Count 9	Count 10	Count 11	Count 12
Appendix A'				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 13	Count 14	Count 15	Count 16
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 17	Count 18	Count 19	Count 20
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$5,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$5,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 21	Count 22	Count 23	Count 24
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 25	Count 26	Count 27	Count 28
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO, 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 29	Count 30	Count 31	Count 32
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 33	Count 34	Count 35	Count 36
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 37	Count 38	Count 39	Count 40
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 41	Count 42	Count 43	Count 44
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	1	1	1	1
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 45	Count 46	Count 47	Count 48
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 49	Count 50	Count 51	Count 52
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshner
 Date: 08/20/09

	Count 53	Count 54	Count 55	Count 56
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	None	None	None	None
7h. Dollar Adjustment	None	None	None	None
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$6,500	\$6,500
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: FRM Chem, Inc.
 ADDRESS: P.O. Box 207
 Highway 47 South
 Washington, MO 63090

Prepared By: Mark K. Leshar
 Date: 08/20/09

	Count 57	Count 58		
<u>Appendix A</u>	Violation of SSURO issued on 10/8/08. FRM Chem distributed a quantity of FRM Chlor 1250 to Graber Equipment on 10/13/08.	Violation of SSURO issued on 10/8/08. FRM Chem distributed a quantity of FRM Chlor 1250 to Graber Equipment on 11/26/08.		
1. Statutory Violation	Sec. 12(a)(2)(I)	Sec. 12(a)(2)(I)		
2. FTTS Code	21A	21A		
3. Violation Level	1	1		
<u>Appendix C - Table 2 - Size of Business Category</u>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)		
5. Size of Business Category	1	1		
<u>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</u>				
6. BASE PENALTY	\$6,500	\$6,500		
<u>Appendix B - Gravity Adjustments</u>				
7a. Pesticide Toxicity	2	2		
7b. Human Harm	3	3		
7c. Environmental Harm	3	3		
7d. Compliance History	2	2		
7e. Culpability	2	2		
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12		
<u>Appendix C - Table 3 - Adjustments</u>				
7g. Percent Adjustment	None	None		
7h. Dollar Adjustment	None	None		
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500		
Combined Total Penalty (total of all columns for line 8, above)	\$377,000			

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

****The final penalty in each column of line 8 cannot exceed the statutory maximum.**

Custom Compounders, Inc.
FIFRA-07-2009-0042

ENVIRONMENTAL PROTECTION AGENCY
REGION 7
NORTH 5th STREET
WASHTON, MISSOURI 66101

10 OCT -2 AM 9:16
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

FRM Chem, Inc.
Washington, Missouri

Respondent

) Docket No. FIFRA-07-2008-0035
)
) COMPLAINANT'S MOTION FOR LEAVE
) TO AMEND THE COMPLAINT AND
) CONSOLIDATE MATTERS
)
)

COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT
AND CONSOLIDATE MATTERS

Pursuant to Rule 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant, the United States Environmental Protection Agency, Region 7 (EPA) seeks leave of the Court to amend the Administrative Complaint filed by EPA on June 26, 2009. The proposed Amended Complaint is attached. In support of this Motion, Complainant avers the following:

Background

- I. The Complaint in the above-captioned matter was filed June 26, 2009. The Complaint contains fifty-six counts, alleging multiple violations by Respondent, FRM Chem, Inc. (FRM), of Sections 12(a)(1)(A) and 12(A)(1)(E) of the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136j(a)(1)(A) and (E). Each of the fifty-six counts alleges that Respondent sold or distributed or held for sale or distribution one of two pesticides whose registration had been cancelled or which was misbranded.

The pesticides alleged to have been sold or distributed were the products FRM CHLOR 1250 and STERI-DINE DISINFECTANT, both produced by FRM, and the registrations for each which had been cancelled in 1995. The proposed penalty in the original Complaint was \$364,000.

- II. Respondent FRM sent a document Complainant construed as an Answer and which was filed with EPA's Regional Hearing Clerk on July 27, 2009.
- III. A Complaint in the matter of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, was filed June 26, 2009. This Complaint contains four counts, alleging that the Respondent, Advanced Products Technology, Inc. (APT) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the four counts alleges that APT sold or distributed the cancelled product STERI-DINE DISINFECTANT, produced by Respondent FRM. The proposed penalty in the original Complaint against APT is \$26,000.
- IV. APT sent a document Complainant construed as an Answer and which was filed with EPA's Regional Hearing Clerk on July 27, 2009.
- V. A Complaint in the matter of Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041, was filed September 23, 2009. This Complaint contains seven counts, alleging that the Respondent, Synisys, Inc. (Synisys) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the seven counts alleges that Synisys sold

or distributed the cancelled product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. The proposed penalty in the original Complaint against Synisys is \$45,500.

VI. A Complaint in the matter of Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042, was filed September 23, 2009. This Complaint contains five counts, alleging that the Respondent, Custom Compounders, Inc. (CCI) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the five counts alleges that CCI sold or distributed the cancelled product FRM CHLOR 1250. The proposed penalty in the original Complaint against CCI is \$32,500.

Issues for Amended Complaint and Consolidation of Matters

VII. At least eight corporations, including FRM, APT, Synisys, and CCI, in addition to Industrial Specialties, Inc., Pool Solutions Midwest, Inc., V.L. Clark Chemical, Inc., and Chemicals, Pharmaceuticals & Intermediates, Inc. all list a facility located at 50 and/or 60 Highline Drive in Union, Missouri as their principal place of business.

VIII. Respondent FRM is a Missouri company incorporated on October 28, 1968, and administratively dissolved by the Missouri Secretary of State July 1, 2008, for failure to file an annual report.

IX. In a Final Decision and Order issued June 13, 2006, the EPA Environmental Appeals Board determined that Respondent FRM had annual gross receipts in excess of \$1,000,000 and assessed an administrative penalty of \$16,500 against Respondent FRM in *In the Matter of FRM Chem Inc., a/k/a Industrial Specialties* in EAB FIFRA Appeal No. 05-01. Multiple attempts were made by EPA to collect the penalty in August, October, and November of 2006, and receipt of the certified letters by FRM's

owner and corporate President Raymond Kastendieck was documented by EPA. To date, Respondent FRM has not paid the penalty assessed in this matter.

- X. Corporate officers for FRM Chem., Inc. listed on the annual registration report filed January 30, 2007, were: President, Raymond E. Kastendieck; Vice-President, Keith G. Kastendieck; Secretary, Ann P. Kastendieck; and Treasurer, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the annual registration report filed January 30, 2007. Karlan Kastendieck served as the sales manager of FRM, and Keith Kastendieck served as the plant manager of FRM.
- XI. APT and Synisys, Inc., are both Missouri companies incorporated by Ann Kastendieck on December 29, 2003. Corporate officers for both corporations are: President, Raymond E. Kastendieck, and Secretary, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the most recent annual registration report for each company, each of which was filed with the Missouri Secretary of State on April 29, 2009.
- XII. Custom Compounders, Inc., is a Georgia company incorporated November 5, 1986. Corporate officers for Custom Compounders, Inc., are: Chief Executive Officer, Raymond Kastendieck; Chief Financial Officer, Karlan Kastendieck; and Secretary, A. P. Kastendieck.
- XIII. Keith G. Kastendieck is the manager and part owner of APT, Synisys, Inc., and Custom Compounders, Inc.
- XIV. Karlan Kastendieck is the sales manager for Respondent FRM and APT.

- XV. On December 21, 2005, a representative for the Missouri Department of Agriculture (MDA) performed an inspection of Respondent FRM's facility at 50 Highline Drive in Union, Missouri, interviewing Karlan Kastendieck, the sales manager for FRM and APT and collecting shipping records and labels documenting that FRM was holding for sale or distribution the unregistered pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XVI. On or about May 20, 2008, EPA issued Request For Information Letters regarding sales, distribution, and shipments of the cancelled pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT to multiple customers of Respondent FRM. Several customers responded to the information request and supplied documentation of multiple sales or distributions by Respondent FRM of FRM CHLOR 1250 and STERI-DINE DISINFECTANT, in addition to four sales or distributions by APT in 2007 of the FRM product STERI-DINE DISINFECTANT to L.W. Chemicals, Inc., of Mt. Olive, Illinois.
- XVII. On October 8, 2008, representatives of MDA and EPA performed an inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounds, Inc., and Synisys, Inc., at the facility located at 50 and 60 Highline Drive in Union, Missouri.
- XVIII. On October 8, 2008, Keith G. Kastendieck, the corporate Vice President and manager for Respondent FRM, was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XIX. On October 8, 2008, Keith G. Kastendieck, in his capacity as Vice-President of

Respondent FRM and as owner and manager for APT, Synisys, Inc., and Custom Compounders, Inc., informed inspectors for the MDA and EPA that “we no longer produce” either of the two pesticides FRM CHLOR 1250 or STERI-DINE DISINFECTANT, and that “we do not have any inventory for STERI-DINE or FRM CHLOR 1250.” He further stated that “[w]e last produced STERIDINE April ‘06 and we last produced FRM CHLOR 1250 Dec. ‘06,” and that “we are not presently producing, labeling, selling, or distributing these products.” He also claimed that FRM Chem, Inc. had ceased operation effective December 31, 2006.

XX. Documents collected by MDA and EPA in the October 8, 2008, inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounders, Inc., and Synisys, Inc., detail sales or distributions by Custom Compounders, Inc., of FRM CHLOR 1250 to the Franklin County Humane Society in Union, Missouri, on or about December 31, 2007, May 22, 2008, June 19, 2008, July 24, 2008, and September 29, 2008.

XXI. On July 15, 2009, EPA Region 7 received documentation in the form of multiple invoices on FRM letterhead detailing sales or distributions of the unregistered pesticide product FRM CHLOR 1250 to McFleeg, Inc., in Watertown, South Dakota, on or about January 8, 2007, March 28, 2007, and January 21, 2008. At the bottom of each invoice is an instruction to “Please Make Check Payable to Synisys, Inc.”

XXII. The March 28, 2007, and the January 21, 2008, sales or distributions of FRM CHLOR 1250 to McFleeg, Inc., documented by the invoices referenced in the preceding paragraph, correspond respectively to Counts 5 and 6 of the June 26, 2009, Complaint

filed against FRM, and also to Counts 2 and 3 of the September 23, 2009, Complaint filed against Synisys.

- XXIII. On August 7, 2009, EPA Region 7 received documentation that containers of the FRM CHLOR 1250 product sold or distributed to McFleeg, Inc. had been manufactured on March 28, 2007, and January 17, 2008, contradicting statements by Keith G. Kastendieck to MDA and EPA on October 8, 2008, that FRM Chlor 1250 had not been manufactured since December 2006. Photographs of the product label identify the manufacturer as Respondent FRM Chem, Inc., of Washington, Missouri.
- XXIV. In addition to the multiple sales of FRM CHLOR 1250, the invoices received on July 15, 2009, also document sales of the products Cir-Clean, Mech II, FRM-X Teat Dip, Udderway, FRM Dine Teat Dip, and Prevent, all of which are identified on their labels as having been produced by Respondent FRM, and also of the product Gain SVP, which is identified on its label as having been produced by APT. The most recent sales to McFleeg, Inc. (of FRM's product Cir-Clean and of APT's product Gain SVP) are documented by an FRM Chem., Inc. invoice dated February 16, 2009, which contains the instruction "Please Make Check Payable to Synisys, Inc."
- XXV. On August 10, 2009, EPA Region 7 received documentation in the form of sales invoices on FRM letterhead that, on at least four occasions (on or about February 6, 2007, February 13, 2008, October 13, 2008, and November 26, 2008), sales or distributions of the unregistered pesticide product FRM Chlor 1250 were made to Graber Equipment in Odon, Indiana. The latter two sales or distributions occurred after EPA Region 7's October 8, 2008, service to Respondent FRM of the order issued

pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. At the bottom of each invoice is an instruction to "Please Make Check Payable to Synisys, Inc."

XXVI. Complainant seeks the following changes in the amended Complaint:

- A. Complainant seeks to consolidate this matter with the matters of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042.
- B. Complainant seeks to add two counts to the Amended Complaint alleging that on or about October 13, 2008, and on or about November 26, 2008, Respondents sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment in Odon, Indiana, in violation of an order issued to Respondent FRM on October 8, 2008, pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticide FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.
- C. Complainant also seeks leave to amend the "Statutory & Regulatory Background" and "Factual Allegations" sections of the Complaint to incorporate law and factual allegations relevant to the proposed additional counts under XXVI.B above.
- D. Complainant also seeks leave to amend its reference in the Complaint to Respondent FRM's address as 50 Highline Drive in Washington, Missouri (the address stated in corporate filings with the Missouri Secretary of State), changing the address to 50

Highline Drive in Union, Missouri 63084, in recognition of the fact that the U.S. Post Offices in Union and Washington, Missouri have each informed Complainant that the latter address is the correct one for Respondent's facility, though Respondent FRM maintains a Post Office Box address in Washington, Missouri.

Controlling Legal Authority

- XXVII. Pursuant to 40 C.F.R. § 22.14, the Complainant may amend the Complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer.
- XXVIII. Pursuant to 40 C.F.R. § 22.12, the Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to the Consolidated Rules where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.
- XXIX. It is a general legal principle that "administrative pleadings are liberally construed and easily amended" and permission to amend will usually be freely given. Yaffe Iron & Metal Co., Inc. v. EPA, 774 F.2d 1008, 1012 (10th Cir. 1985). If leave to amend is to be denied, it must generally be shown that the amendment will result in prejudice to the opposing party and that the prejudice would constitute a serious disadvantage that goes beyond mere inconvenience. In re: Port of Oakland, MPRSA Appeal No. 91-1 (EAB, August 5, 1992).
- XXX. The facts and circumstances surrounding the violations identified as a result of information gathered in July and August of 2009 are nearly identical to those surrounding the violations already alleged in the Complaint. A denial of leave to

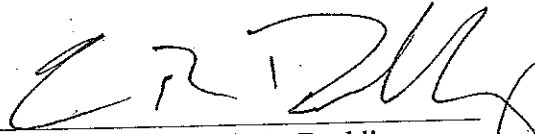
amend the Complaint, thus creating the need to pursue additional violations in one or more separate proceedings, will result in duplication of efforts by Complainant, Respondent, and the Court and the inefficient use of the administrative process.

XXXI. The above-captioned matter shares common questions of fact and law with the matters of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042. The four corporations share common officers, directors, and supervisors, engage in substantially the same business operations, share the same principal place of business, and are charged with similar violations of selling one or both of the two FRM-produced unregistered pesticides, FRM CHLOR 1250 and STERI-DINE DISINFECTANT to several common customers. Furthermore, FIFRA 14(a)(4), 7 U.S.C. § 136(a)(4), states that a respondent's size of business shall be considered in determining the amount of a penalty for a FIFRA violation. Given this factor in calculating liability, the ultimate penalty for which the four Respondents may be liable, collectively or individually, may be contingent on whether one or more of the other three corporations is deemed a corporate successor of FRM or if evidence gathered via discovery establishes grounds for piercing of the corporate veil. This factor, along with the other facts mentioned above, militates in favor of consolidating the four matters in the interest of efficiency.

XXXII. This amendment is in the public interest and will promote the efficient and expeditious disposition of this matter.

XXXIII. The proposed amended complaint is included with this motion as an attachment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CR Dudding", written over a horizontal line.

Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101
(913) 551-7524

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2009, I hand-delivered the original and one true copy of this Motion for Leave to Amend the Complaint, to the Regional Hearing Clerk, and sent one true and correct copy:

via Certified Mail, return receipt requested, to:

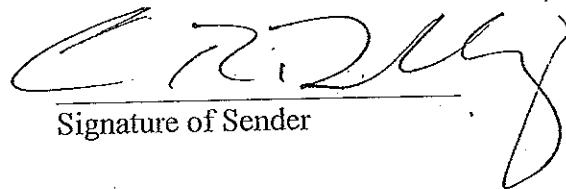
Raymond Kastendieck
Registered Agent for
FRM Chem, Inc.
3007 Brighton Lane
Washington, MO 63090

Robert Sichel
Registered Agent for Custom Compounders, Inc.
750 Hammond Drive, Bldg 9
Atlanta, Georgia 30328.

Ann P. Kastendieck
Reg. Agent for Synisys, Inc. and Advanced Products Technology, Inc.
P.O. Box 1656
Washington, MO 63090

via Federal Express, to:

Judge Barbara Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street
Suite 350
Washington, D.C. 20005


Signature of Sender

Synisys, Inc.
FIFRA-07-2009-0041

ENVIRONMENTAL PROTECTION AGENCY
REGION 7
1 NORTH 5th STREET
AS CITY, KANSAS 66101

NOV 20 2009 9:16 AM
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

FRM Chem, Inc.
Washington, Missouri

Respondent

) Docket No. FIFRA-07-2008-0035
)
) COMPLAINANT'S MOTION FOR LEAVE
) TO AMEND THE COMPLAINT AND
) CONSOLIDATE MATTERS
)
)

COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT
AND CONSOLIDATE MATTERS

Pursuant to Rule 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant, the United States Environmental Protection Agency, Region 7 (EPA) seeks leave of the Court to amend the Administrative Complaint filed by EPA on June 26, 2009. The proposed Amended Complaint is attached. In support of this Motion, Complainant avers the following:

Background

I. The Complaint in the above-captioned matter was filed June 26, 2009. The Complaint contains fifty-six counts, alleging multiple violations by Respondent, FRM Chem, Inc. (FRM), of Sections 12(a)(1)(A) and 12(A)(1)(E) of the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136j(a)(1)(A) and (E). Each of the fifty-six counts alleges that Respondent sold or distributed or held for sale or distribution one of two pesticides whose registration had been cancelled or which was misbranded. The pesticides alleged to have been sold or distributed were the products FRM CHLOR 1250 and STERI-DINE DISINFECTANT, both produced by FRM, and the registrations for each which had been cancelled in 1995. The proposed penalty in the original Complaint was \$364,000.

- II. Respondent FRM sent a document Complainant construed as an Answer and which was filed with EPA's Regional Hearing Clerk on July 27, 2009.
- III. A Complaint in the matter of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, was filed June 26, 2009. This Complaint contains four counts, alleging that the Respondent, Advanced Products Technology, Inc. (APT) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the four counts alleges that APT sold or distributed the cancelled product STERI-DINE DISINFECTANT, produced by Respondent FRM. The proposed penalty in the original Complaint against APT is \$26,000.
- IV. APT sent a document Complainant construed as an Answer and which was filed with EPA's Regional Hearing Clerk on July 27, 2009.
- V. A Complaint in the matter of Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041, was filed September 23, 2009. This Complaint contains seven counts, alleging that the Respondent, Synisys, Inc. (Synisys) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the seven counts alleges that Synisys sold

or distributed the cancelled product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. The proposed penalty in the original Complaint against Synisys is \$45,500.

- VI. A Complaint in the matter of Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042, was filed September 23, 2009. This Complaint contains five counts, alleging that the Respondent, Custom Compounders, Inc. (CCI) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the five counts alleges that CCI sold or distributed the cancelled product FRM CHLOR 1250. The proposed penalty in the original Complaint against CCI is \$32,500.

Issues for Amended Complaint and Consolidation of Matters

- VII. At least eight corporations, including FRM, APT, Synisys, and CCI, in addition to Industrial Specialties, Inc., Pool Solutions Midwest, Inc., V.L. Clark Chemical, Inc., and Chemicals, Pharmaceuticals & Intermediates, Inc. all list a facility located at 50 and/or 60 Highline Drive in Union, Missouri as their principal place of business.
- VIII. Respondent FRM is a Missouri company incorporated on October 28, 1968, and administratively dissolved by the Missouri Secretary of State July 1, 2008, for failure to file an annual report.
- IX. In a Final Decision and Order issued June 13, 2006, the EPA Environmental Appeals Board determined that Respondent FRM had annual gross receipts in excess of \$1,000,000 and assessed an administrative penalty of \$16,500 against Respondent FRM in *In the Matter of FRM Chem Inc., a/k/a Industrial Specialties* in EAB FIFRA Appeal No. 05-01. Multiple attempts were made by EPA to collect the penalty in August, October, and November of 2006, and receipt of the certified letters by FRM's

owner and corporate President Raymond Kastendieck was documented by EPA. To date, Respondent FRM has not paid the penalty assessed in this matter.

- X. Corporate officers for FRM Chem., Inc. listed on the annual registration report filed January 30, 2007, were: President, Raymond E. Kastendieck; Vice-President, Keith G. Kastendieck; Secretary, Ann P. Kastendieck; and Treasurer, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the annual registration report filed January 30, 2007. Karlan Kastendieck served as the sales manager of FRM, and Keith Kastendieck served as the plant manager of FRM.
- XI. APT and Synisys, Inc., are both Missouri companies incorporated by Ann Kastendieck on December 29, 2003. Corporate officers for both corporations are: President, Raymond E. Kastendieck, and Secretary, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the most recent annual registration report for each company, each of which was filed with the Missouri Secretary of State on April 29, 2009.
- XII. Custom Compounds, Inc., is a Georgia company incorporated November 5, 1986. Corporate officers for Custom Compounds, Inc., are: Chief Executive Officer, Raymond Kastendieck; Chief Financial Officer, Karlan Kastendieck; and Secretary, A. P. Kastendieck.
- XIII. Keith G. Kastendieck is the manager and part owner of APT, Synisys, Inc., and Custom Compounds, Inc.
- XIV. Karlan Kastendieck is the sales manager for Respondent FRM and APT.

- XV. On December 21, 2005, a representative for the Missouri Department of Agriculture (MDA) performed an inspection of Respondent FRM's facility at 50 Highline Drive in Union, Missouri, interviewing Karlan Kastendieck, the sales manager for FRM and APT and collecting shipping records and labels documenting that FRM was holding for sale or distribution the unregistered pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XVI. On or about May 20, 2008, EPA issued Request For Information Letters regarding sales, distribution, and shipments of the cancelled pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT to multiple customers of Respondent FRM. Several customers responded to the information request and supplied documentation of multiple sales or distributions by Respondent FRM of FRM CHLOR 1250 and STERI-DINE DISINFECTANT, in addition to four sales or distributions by APT in 2007 of the FRM product STERI-DINE DISINFECTANT to L.W. Chemicals, Inc., of Mt. Olive, Illinois.
- XVII. On October 8, 2008, representatives of MDA and EPA performed an inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounds, Inc., and Synisys, Inc., at the facility located at 50 and 60 Highline Drive in Union, Missouri.
- XVIII. On October 8, 2008, Keith G. Kastendieck, the corporate Vice President and manager for Respondent FRM, was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XIX. On October 8, 2008, Keith G. Kastendieck, in his capacity as Vice-President of

Respondent FRM and as owner and manager for APT, Synisys, Inc., and Custom Compounders, Inc., informed inspectors for the MDA and EPA that "we no longer produce" either of the two pesticides FRM CHLOR 1250 or STERI-DINE DISINFECTANT, and that "we do not have any inventory for STERI-DINE or FRM CHLOR 1250." He further stated that "[w]e last produced STERIDINE April '06 and we last produced FRM CHLOR 1250 Dec. '06," and that "we are not presently producing, labeling, selling, or distributing these products." He also claimed that FRM Chem, Inc. had ceased operation effective December 31, 2006.

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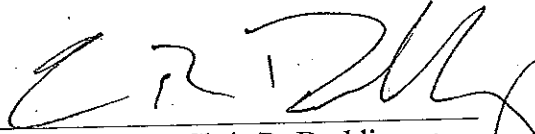
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Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101
(913) 551-7524

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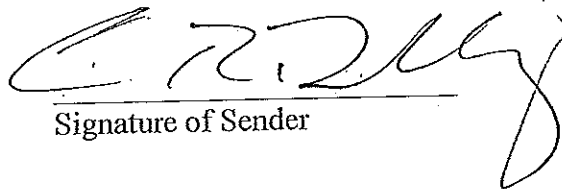
Raymond Kastendieck
Registered Agent for
FRM Chem, Inc.
3007 Brighton Lane
Washington, MO 63090

Robert Sichel
Registered Agent for Custom Compounders, Inc.
750 Hammond Drive, Bldg 9
Atlanta, Georgia 30328.

Ann P. Kastendieck
Reg. Agent for Synisys, Inc. and Advanced Products Technology, Inc.
P.O. Box 1656
Washington, MO 63090

via Federal Express, to:

Judge Barbara Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street
Suite 350
Washington, D.C. 20005


Signature of Sender

Advanced Products Technology, Inc.
FIFRA-07-2008-0036

ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11 NORTH 5th STREET
WAS CITY, KANSAS 66101

OBJECT -2 AM 9:16
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

FRM Chem, Inc.
Washington, Missouri

Respondent

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- V. A Complaint in the matter of Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041, was filed September 23, 2009. This Complaint contains seven counts, alleging that the Respondent, Synisys, Inc. (Synisys) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the seven counts alleges that Synisys sold

or distributed the cancelled product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. The proposed penalty in the original Complaint against Synisys is \$45,500.

- VI. A Complaint in the matter of Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042, was filed September 23, 2009. This Complaint contains five counts, alleging that the Respondent, Custom Compounders, Inc. (CCI) violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the five counts alleges that CCI sold or distributed the cancelled product FRM CHLOR 1250. The proposed penalty in the original Complaint against CCI is \$32,500.

Issues for Amended Complaint and Consolidation of Matters

- VII. At least eight corporations, including FRM, APT, Synisys, and CCI, in addition to Industrial Specialties, Inc., Pool Solutions Midwest, Inc., V.L. Clark Chemical, Inc., and Chemicals, Pharmaceuticals & Intermediates, Inc. all list a facility located at 50 and/or 60 Highline Drive in Union, Missouri as their principal place of business.
- VIII. Respondent FRM is a Missouri company incorporated on October 28, 1968, and administratively dissolved by the Missouri Secretary of State July 1, 2008, for failure to file an annual report.
- IX. In a Final Decision and Order issued June 13, 2006, the EPA Environmental Appeals Board determined that Respondent FRM had annual gross receipts in excess of \$1,000,000 and assessed an administrative penalty of \$16,500 against Respondent FRM in *In the Matter of FRM Chem Inc., a/k/a Industrial Specialties* in EAB FIFRA Appeal No. 05-01. Multiple attempts were made by EPA to collect the penalty in August, October, and November of 2006, and receipt of the certified letters by FRM's

owner and corporate President Raymond Kastendieck was documented by EPA. To date, Respondent FRM has not paid the penalty assessed in this matter.

- X. Corporate officers for FRM Chem., Inc. listed on the annual registration report filed January 30, 2007, were: President, Raymond E. Kastendieck; Vice-President, Keith G. Kastendieck; Secretary, Ann P. Kastendieck; and Treasurer, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the annual registration report filed January 30, 2007. Karlan Kastendieck served as the sales manager of FRM, and Keith Kastendieck served as the plant manager of FRM.
- XI. APT and Synisys, Inc., are both Missouri companies incorporated by Ann Kastendieck on December 29, 2003. Corporate officers for both corporations are: President, Raymond E. Kastendieck, and Secretary, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the most recent annual registration report for each company, each of which was filed with the Missouri Secretary of State on April 29, 2009.
- XII. Custom Compounders, Inc., is a Georgia company incorporated November 5, 1986. Corporate officers for Custom Compounders, Inc., are: Chief Executive Officer, Raymond Kastendieck; Chief Financial Officer, Karlan Kastendieck; and Secretary, A. P. Kastendieck.
- XIII. Keith G. Kastendieck is the manager and part owner of APT, Synisys, Inc., and Custom Compounders, Inc.
- XIV. Karlan Kastendieck is the sales manager for Respondent FRM and APT.

- XV. On December 21, 2005, a representative for the Missouri Department of Agriculture (MDA) performed an inspection of Respondent FRM's facility at 50 Highline Drive in Union, Missouri, interviewing Karlan Kastendieck, the sales manager for FRM and APT and collecting shipping records and labels documenting that FRM was holding for sale or distribution the unregistered pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XVI. On or about May 20, 2008, EPA issued Request For Information Letters regarding sales, distribution, and shipments of the cancelled pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT to multiple customers of Respondent FRM. Several customers responded to the information request and supplied documentation of multiple sales or distributions by Respondent FRM of FRM CHLOR 1250 and STERI-DINE DISINFECTANT, in addition to four sales or distributions by APT in 2007 of the FRM product STERI-DINE DISINFECTANT to L.W. Chemicals, Inc., of Mt. Olive, Illinois.
- XVII. On October 8, 2008, representatives of MDA and EPA performed an inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounds, Inc., and Synisys, Inc., at the facility located at 50 and 60 Highline Drive in Union, Missouri.
- XVIII. On October 8, 2008, Keith G. Kastendieck, the corporate Vice President and manager for Respondent FRM, was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250 and STERI-DINE DISINFECTANT.
- XIX. On October 8, 2008, Keith G. Kastendieck, in his capacity as Vice-President of

Respondent FRM and as owner and manager for APT, Synisys, Inc., and Custom Compounders, Inc., informed inspectors for the MDA and EPA that "we no longer produce" either of the two pesticides FRM CHLOR 1250 or STERI-DINE DISINFECTANT, and that "we do not have any inventory for STERI-DINE or FRM CHLOR 1250." He further stated that "[w]e last produced STERIDINE April '06 and we last produced FRM CHLOR 1250 Dec. '06," and that "we are not presently producing, labeling, selling, or distributing these products." He also claimed that FRM Chem, Inc. had ceased operation effective December 31, 2006.

XX. Documents collected by MDA and EPA in the October 8, 2008, inspection of FRM, APT, Industrial Specialties, Inc., Custom Compounders, Inc., and Synisys, Inc., detail sales or distributions by Custom Compounders, Inc., of FRM CHLOR 1250 to the Franklin County Humane Society in Union, Missouri, on or about December 31, 2007, May 22, 2008, June 19, 2008, July 24, 2008, and September 29, 2008.

XXI. On July 15, 2009, EPA Region 7 received documentation in the form of multiple invoices on FRM letterhead detailing sales or distributions of the unregistered pesticide product FRM CHLOR 1250 to McFleeg, Inc., in Watertown, South Dakota, on or about January 8, 2007, March 28, 2007, and January 21, 2008. At the bottom of each invoice is an instruction to "Please Make Check Payable to Synisys, Inc."

XXII. The March 28, 2007, and the January 21, 2008, sales or distributions of FRM CHLOR 1250 to McFleeg, Inc., documented by the invoices referenced in the preceding paragraph, correspond respectively to Counts 5 and 6 of the June 26, 2009, Complaint

filed against FRM, and also to Counts 2 and 3 of the September 23, 2009, Complaint filed against Synisys.

- XXIII. On August 7, 2009, EPA Region 7 received documentation that containers of the FRM CHLOR 1250 product sold or distributed to McFleeg, Inc. had been manufactured on March 28, 2007, and January 17, 2008, contradicting statements by Keith G. Kastendieck to MDA and EPA on October 8, 2008, that FRM Chlor 1250 had not been manufactured since December 2006. Photographs of the product label identify the manufacturer as Respondent FRM Chem, Inc., of Washington, Missouri.
- XXIV. In addition to the multiple sales of FRM CHLOR 1250, the invoices received on July 15, 2009, also document sales of the products Cir-Clean, Mech II, FRM-X Teat Dip, Udderway, FRM Dine Teat Dip, and Prevent, all of which are identified on their labels as having been produced by Respondent FRM, and also of the product Gain SVP, which is identified on its label as having been produced by APT. The most recent sales to McFleeg, Inc. (of FRM's product Cir-Clean and of APT's product Gain SVP) are documented by an FRM Chem., Inc. invoice dated February 16, 2009, which contains the instruction "Please Make Check Payable to Synisys, Inc."
- XXV. On August 10, 2009, EPA Region 7 received documentation in the form of sales invoices on FRM letterhead that, on at least four occasions (on or about February 6, 2007, February 13, 2008, October 13, 2008, and November 26, 2008), sales or distributions of the unregistered pesticide product FRM Chlor 1250 were made to Graber Equipment in Odon, Indiana. The latter two sales or distributions occurred after EPA Region 7's October 8, 2008, service to Respondent FRM of the order issued

pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. At the bottom of each invoice is an instruction to "Please Make Check Payable to Synisys, Inc."

XXVI. Complainant seeks the following changes in the amended Complaint:

- A. Complainant seeks to consolidate this matter with the matters of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042.
- B. Complainant seeks to add two counts to the Amended Complaint alleging that on or about October 13, 2008, and on or about November 26, 2008, Respondents sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment in Odon, Indiana, in violation of an order issued to Respondent FRM on October 8, 2008, pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticide FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.
- C. Complainant also seeks leave to amend the "Statutory & Regulatory Background" and "Factual Allegations" sections of the Complaint to incorporate law and factual allegations relevant to the proposed additional counts under XXVI.B above.
- D. Complainant also seeks leave to amend its reference in the Complaint to Respondent FRM's address as 50 Highline Drive in Washington, Missouri (the address stated in corporate filings with the Missouri Secretary of State), changing the address to 50

Highline Drive in Union, Missouri 63084, in recognition of the fact that the U.S. Post Offices in Union and Washington, Missouri have each informed Complainant that the latter address is the correct one for Respondent's facility, though Respondent FRM maintains a Post Office Box address in Washington, Missouri.

Controlling Legal Authority

XXVII. Pursuant to 40 C.F.R. § 22.14, the Complainant may amend the Complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer.

XXVIII. Pursuant to 40 C.F.R. § 22.12, the Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to the Consolidated Rules where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

XXIX. It is a general legal principle that "administrative pleadings are liberally construed and easily amended" and permission to amend will usually be freely given. Yaffe Iron & Metal Co., Inc. v. EPA, 774 F.2d 1008, 1012 (10th Cir. 1985). If leave to amend is to be denied, it must generally be shown that the amendment will result in prejudice to the opposing party and that the prejudice would constitute a serious disadvantage that goes beyond mere inconvenience. In re: Port of Oakland, MPRSA Appeal No. 91-1 (EAB, August 5, 1992).

XXX. The facts and circumstances surrounding the violations identified as a result of information gathered in July and August of 2009 are nearly identical to those surrounding the violations already alleged in the Complaint. A denial of leave to

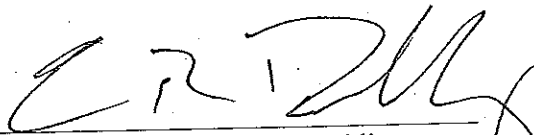
amend the Complaint, thus creating the need to pursue additional violations in one or more separate proceedings, will result in duplication of efforts by Complainant, Respondent, and the Court and the inefficient use of the administrative process.

XXXI. The above-captioned matter shares common questions of fact and law with the matters of Advanced Products Technology, Inc., Washington, Missouri, Docket No. FIFRA-07-2008-0036, Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042. The four corporations share common officers, directors, and supervisors, engage in substantially the same business operations, share the same principal place of business, and are charged with similar violations of selling one or both of the two FRM-produced unregistered pesticides, FRM CHLOR 1250 and STERI-DINE DISINFECTANT to several common customers. Furthermore, FIFRA 14(a)(4), 7 U.S.C: § 136l(a)(4), states that a respondent's size of business shall be considered in determining the amount of a penalty for a FIFRA violation. Given this factor in calculating liability, the ultimate penalty for which the four Respondents may be liable, collectively or individually, may be contingent on whether one or more of the other three corporations is deemed a corporate successor of FRM or if evidence gathered via discovery establishes grounds for piercing of the corporate veil. This factor, along with the other facts mentioned above, militates in favor of consolidating the four matters in the interest of efficiency.

XXXII. This amendment is in the public interest and will promote the efficient and expeditious disposition of this matter.

XXXIII. The proposed amended complaint is included with this motion as an attachment.

Respectfully submitted,



Chris R. Dudding
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Region VII
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2009, I hand-delivered the original and one true copy of this Motion for Leave to Amend the Complaint, to the Regional Hearing Clerk, and sent one true and correct copy:

via Certified Mail, return receipt requested, to:

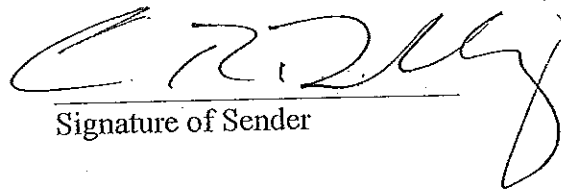
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via Federal Express, to:

Judge Barbara Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street
Suite 350
Washington, D.C. 20005


Signature of Sender