

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Advanced Products Technology, Inc.,
Keith G. Kastendieck, and Karlan C.
Kastendieck

Respondents

) Docket No. FIFRA-07-2008-0036
)
) FIRST AMENDED COMPLAINT
) AND NOTICE OF OPPORTUNITY
) FOR HEARING
)
)
)

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. § 136f.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondents have 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 Respondents are Advanced Products Technology, Inc., a pesticide producer and distributor, located at 50 and 60 Highline Drive in Union, Missouri, and also Keith G. Kastendieck and Karlan C. Kastendieck, who are and were respectively, the Plant Manager and the Sales Manager for Respondent Advanced Products Technology, Inc., as well as officers, directors and shareholders of the corporation. The Respondents are and were at all times referred

to in this Complaint, "persons" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). Respondent Advanced Products Technology, Inc. is a Missouri corporation qualified to do business in the state of Missouri.

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).

Section IV

Factual Allegations

14. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA granted a registration to Intercon Chemical Company (the registrant) for a pesticide known as STERI-DINE DISINFECTANT, EPA Registration Number (EPA Reg. No.) 48211-70. In accordance with 40 C.F.R. Section 152.132, the registrant subsequently entered into one or more agreements to supplementally distribute the registrant’s product. One such agreement was made with a Missouri corporation, FRM Chem, Inc. (FRM Chem), to distribute the product STERI-DINE DISINFECTANT, using EPA Reg. No. 48211-70-10366.

15. 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 FRM Chem to distribute the registrant’s product under the name of FRM CHLOR 1250, using EPA Reg. No. 48211-20001-10366.

16. On July 19, 1995, the registrations of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70, and of CHLOR 1250, EPA Reg. No. 48211-20001, were cancelled, as were all supplemental distribution agreements pertaining thereto. Sales of existing stock by the registrant and supplemental distributors of the two products were prohibited after January 15, 1996.

17. At all times relevant to the violations alleged in this Complaint, both FRM Chem and Respondent Advanced Products Technology, Inc., share or shared the facility at 50 and 60 Hi-line Drive in Union, Missouri.

18. Respondents Advanced Products Technology, Inc., Keith G. Kastendieck, and Karlan C. Kastendieck, are and were at all times referred to in this Complaint, “persons” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. Respondent Advanced Products Technology, Inc., was, at all times referred to in this Complaint, a Missouri corporation qualified to business in the state of Missouri.

20. Keith G. Kastendieck and Karlan C. Kastendieck are two of the four principal stockholders, corporate officers, and members of the board of directors for both FRM Chem and Advanced Products Technology, Inc.

21. Karlan C. Kastendieck was, at all times referred to in this Complaint, the sales manager for the businesses operating at 50 and 60 Hi-line Drive in Union, Missouri.

22. Karlan C. Kastendieck's responsibilities as sales manager included sales management and writing labeling for products, as well as responsibility for the daily operations at the FRM Chem and Advanced Products Technology, Inc. facility at 50 and 60 Hi-line Drive in Union, Missouri.

23. Keith G. Kastendieck has been employed by FRM Chem since approximately 1982 and was, at all times referred to in this Complaint, the plant manager and part owner of the businesses located at 50 and 60 Hi-line Drive in Union, Missouri, including FRM Chem and Respondent Advanced Products Technology, Inc.

24. Keith G. Kastendieck's responsibilities as plant manager included purchasing, quality control, and manufacturing control for the products produced by the companies operating at 50 and 60 Hi-line Drive, as well as responsibility for the daily operations at the facility shared by FRM Chem and by Respondent Advanced Products Technology, Inc.

25. On or about December 21, 2005, and December 28, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at the facility at 50 and 60 Hi-line Drive in Union, Missouri, shared by multiple businesses run by the Kastendieck family, including Advanced Products Technology, Inc., and FRM Chem, to determine the status of FRM Chem's compliance with FIFRA.

26. During the inspections referenced in paragraph 25, the MDA representative documented that FRM Chem was holding for sale or distribution STERI-DINE DISINFECTANT, the cancelled pesticide product referenced in paragraph 14.

27. On or about May 20, 2008, EPA requested information from L W Chemicals, Inc. of Mt. Olive, Illinois, regarding purchases of the pesticide referenced in paragraph 14 from FRM Chem and any other distributors. On or about May 27, 2008, L W Chemicals, Inc. responded to EPA's request for information and documented multiple sales or distributions by Respondent Advanced Products Technology, of the pesticide STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, referenced in paragraph 14.

28. During the inspections referenced in paragraph 25, the MDA representative documented that FRM Chem was holding for sale or distribution a 12.5% sodium hypochlorite solution labeled as FRM CHLOR 1250, the cancelled pesticide product referenced in paragraph 15.

29. On or about October 8, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at the facility at 50 and 60 Hi-line Drive in Union, Missouri, to determine the status of Respondents' compliance with FIFRA. On that date, Keith G. Kastendieck 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.

30. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that neither FRM Chem nor the other corporations run by the Kastendieck family at 50 and 60 Hi-line Drive in Union, Missouri, had produced, sold, or distributed either of the two pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, since December 2006.

31. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that FRM Chem had ceased operation effective December 31, 2006.

32. On or about July 10, 2009, EPA requested information from the Franklin County Humane Society, of Union, Missouri, regarding sales or distributions by Respondent Advanced Products Technology, Inc. of a 12.5% sodium hypochlorite solution sanitizer.

33. On or about July 24, 2009, the Franklin County Humane Society responded to EPA's request for information and documented multiple sales or distributions by Respondents of a product intended for use as a sanitizer, labeled SODIUM HYPOCHLORITE SOLUTION, produced by Respondent Advanced Products Technology, Inc.

34. The label of the product SODIUM HYPOCHLORITE SOLUTION distributed by Respondents to the Franklin County Humane Society identifies Respondent Advanced Products Technology, Inc. as its producer.

35. On FRM Chem invoices, item numbers starting with the prefix "1004-" refer to a 12.5% sodium hypochlorite product, FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

36. On Respondent Advanced Products Technology, Inc. packing slips, item numbers starting with the prefix "1004-" refer to a 12.5% sodium hypochlorite product.

37. The chemical sodium hypochlorite is commonly used in aqueous solution as a sanitizer and disinfectant.

38. On one or more occasions, a member of the Kastendieck family, representing Respondent Advanced Products Technology, Inc. and/or FRM Chem, provided instruction to officers or employees of the Franklin County Humane Society on using a 12.5% sodium hypochlorite solution product as an antimicrobial disinfectant.

39. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION states the product formulation as "Active Ingredient: Sodium Hypochlorite ... 12.5%" and "Inert Ingredients ... 87.5%."

40. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, states the product formulation as "Active Ingredient: Sodium Hypochlorite ... 12.5%" and "Inert Ingredients ... 87.5%."

41. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION under the heading "Rinse Method" for non-porous food contact surfaces directs that, following cleaning of non-porous food contact equipment "in the normal manner," a solution of 100 parts per million available chlorine be used on the equipment prior to use, maintaining contact for at least two minutes.

42. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, under the heading "Rinse Method" for non-porous food contact surfaces directs that, following cleaning of non-porous food contact equipment "in the normal manner," a solution of 100 parts per million available chlorine be used on the equipment prior to use, maintaining contact for at least two minutes.

43. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION under the heading "Clean-in-Place Method" for non-porous food contact surfaces directs that equipment be thoroughly cleaned, and then that a solution of 200 parts per million available chlorine be used to completely fill the interior of food contact equipment, ensuring contact with all internal surfaces for at least 10 minutes.

44. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, under the heading "Clean-in-Place Method" for non-porous food contact surfaces directs that equipment be thoroughly cleaned, and then that a solution of 200 parts per million available chlorine be used to completely fill the interior of food contact equipment, ensuring contact with all internal surfaces for at least 10 minutes.

45. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION under the heading "Farm Premises" directs that surfaces be thoroughly cleaned with soap or detergent and water, then that the surfaces be saturated for a period of 10 minutes with a solution of at least 1000 parts per million available chlorine.

46. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, under the heading "Farm Premises" directs that surfaces be thoroughly cleaned with soap or detergent and water, then that the surfaces be saturated for a period of 10 minutes with a solution of at least 1000 parts per million available chlorine.

Violations

47. The Complainant hereby states and alleges that Respondents have violated FIFRA as follows:

Count 1

48. The facts stated in paragraphs 14 through 47 are realleged and incorporated as if fully stated herein.

49. On or about August 27, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

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

51. Respondents 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 Respondents.

Count 2

53. The facts stated in paragraphs 14 through 52 are realleged and incorporated as if fully stated herein.

54. On or about September 28, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

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

56. Respondents 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 Respondents.

Count 3

58. The facts stated in paragraphs 14 through 57 are realleged and incorporated as if fully stated herein.

59. On or about October 3, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

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

61. Respondents 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 Respondents.

Count 4

63. The facts stated in paragraphs 14 through 62 are realleged and incorporated as if fully stated herein.

64. On or about December 19, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.
65. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
66. Respondents 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 Respondents.

Count 5

68. The facts stated in paragraphs 14 through 67 are realleged and incorporated as if fully stated herein.
69. On or about January 27, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.
70. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.
71. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.
72. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
73. For the sale or distribution to the Franklin County Humane Society, Respondents 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.

74. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 68 through 73, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 6

75. The facts stated in paragraphs 14 through 74 are realleged and incorporated as if fully stated herein.

76. On or about February 3, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

77. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

78. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

79. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

80. For the sale or distribution to the Franklin County Humane Society, Respondents 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.

81. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 75 through 80, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 7

82. The facts stated in paragraphs 14 through 81 are realleged and incorporated as if fully stated herein.

83. On or about March 25, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

84. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

85. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

86. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

87. For the sale or distribution to the Franklin County Humane Society, Respondents 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.

88. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 82 through 87, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 8

89. The facts stated in paragraphs 14 through 88 are realleged and incorporated as if fully stated herein.

90. On or about May 27, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

91. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

92. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

93. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

94. For the sale or distribution to the Franklin County Humane Society, Respondents 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.

95. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 89 through 94, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 9

96. The facts stated in paragraphs 14 through 95 are realleged and incorporated as if fully stated herein.

97. On or about July 14, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

98. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

99. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

100. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

101. For the sale or distribution to the Franklin County Humane Society, Respondents 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 96 through 101, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Section V

Total Proposed Penalty

103. 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 on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). For any such violation occurring on or after January 12, 2009, the maximum statutory penalty per violation is Seven Thousand Five Hundred Dollars (\$7,500). EPA proposes to assess a total civil penalty of \$63,500 against Respondents for the above-described violations.

Appropriateness of Proposed Penalty

104. 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 Advanced Products Technology, Inc., the effect of the proposed penalty on Respondent Advanced Products Technology, Inc.'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)).

105. For purposes of calculating the proposed penalty, Respondent Advanced Products Technology, Inc. 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 Advanced Products Technology Inc.'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.

106. Respondents have the right, upon submittal of certified financial information, to consideration of Respondents' financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent Advanced Products Technology, Inc. to continue in business.

107. The proposed penalty constitutes a demand *only if* Respondents fail to raise *bona fide* issues of ability to pay, or other *bona fide* affirmative defenses relevant to the determination of any final penalty.

108. 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.

109. Payment of the total penalty - \$63,500 - 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.

110. If Respondents do 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

111. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondents have 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 Respondents wish to avoid being found in default, Respondents must file a written answer and request for hearing with the EPA Region 7 Regional Hearing Clerk, at:

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 Respondents have any knowledge, or shall clearly state that Respondents have 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 Respondents intend 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.

112. 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.

113. If Respondents fail 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 Respondents' 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.

114. Respondents are 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

115. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondents' request. Respondents 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 Respondents establish 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

116. 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.

117. 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 Respondents' right to request a hearing on any matter stipulated to therein.

6/3/10
Date

William A. Spratlin
William A. Spratlin
Director
Water, Wetlands and Pesticides Division

6/2/10
Date

Chris R. Dudding
Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of the Amended Complaints and Notices of Opportunity for Hearing in the matters of FRM Chem, Inc., *et al.*, Docket No. FIFRA-07-2008-0035; Advanced Products Technology, Inc., *et al.*, Docket No. FIFRA-07-2008-0036; Synisys, Inc., *et al.*, Docket No. FIFRA-07-2009-0041; and Custom Compounders, Inc., *et al.*, Docket No. FIFRA-07-2009-0042; to the Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the above-referenced documents to the following:

via UPS, to:

Ronald E. Jenkins
Jenkins & Kling, PC
10 S. Brentwood Blvd., Ste. 200
St. Louis, MO 63105

Via UPS, to:

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

Via UPS, to:

U.S. Environmental Protection Agency
Office of the Hearing Clerk
1099 14th Street
Suite 350
Washington, D.C. 20005

June 3, 2010
Date

[Signature]
Name: