

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2009-0041
)
Synisys, Inc., FRM Chem, Inc.)
Keith G. Kastendieck and) ANSWER TO
Karlán C. Kastendieck,) FIRST AMENDED COMPLAINT
)
Respondents.)

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

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

Section I

Jurisdiction

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

Section II

Parties

3. Individual Respondents admit the allegations contained in Paragraph 3.

4. Individual Respondents admit the allegations in Paragraph 4 with the exception that Karlan denies that he was an officer, director and shareholder of the corporation during the entirety of the time period set forth in the First Amended Complaint.

Section III

Statutory & Regulatory Background

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

Section IV

Factual Allegations

12. Individual Respondents admit the allegations of registration and supplemental registration. Individual Respondents deny the allegations of cancellation and prohibition. In any event, the product was never registered or supplementally registered to Individual Respondents.

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

14. Keith admits the allegations contained in Paragraph 14. Karlan is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 14 and, therefore, denies same.

15. Individual Respondents deny the allegations contained in Paragraph 15.

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

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

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

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

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

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

22. Individual Respondents deny the allegations contained in Paragraph 22.
23. Individual Respondents admit the allegations contained in Paragraph 23.
24. Individual Respondents deny the allegations contained in Paragraph 24.

Violations

25. Individual Respondents deny the allegations contained in Paragraph 25.

Counts 1 - 7
Paragraphs 26 - 74

There are a series of seven paragraphs in each of Counts 1 through 7. They are virtually identical allegations other than dates, customer names and invoice numbers.

The first paragraph of the series realleges prior paragraphs. Likewise, Individual Respondents do the same.

The second paragraph of the series alleges Synisys, Inc. and FRM Chem, Inc. sold or distributed a product. Individual Respondents, on information and belief, believe Synisys, Inc. did sell or distribute this product and that FRM Chem, Inc. did not sell or distribute this product. Nevertheless, Individual Respondents deny that they ever sold or distributed the product in an individual capacity.

The allegations in the third paragraph in the series are denied.

The allegations in the fourth paragraph in the series are admitted.

The allegations in the fifth paragraph in the series are admitted.

The allegations in the sixth and seventh paragraphs are denied.

AFFIRMATIVE DEFENSES AND OTHER RESPONSES

Section V

Total Proposed Penalty

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

Appropriateness of Proposed Penalty

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

77. For the same purposes set forth in Paragraphs 75 and 76, Individual Respondents state that the Corporate Respondent year after year during this period notified Complainant of its sales of this product on Complainant's own government forms. No representative of EPA and/or MDA ever notified Corporate Respondent of the cancellation until October 8, 2008.

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

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

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

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

82. As to Individual Respondent Karlan and Counts 6 and 7, he was no longer employed as of October 13 and November 26, 2008.

Respectfully submitted,

JENKINS & KLING, P.C.

By: _____

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CERTIFICATE OF SERVICE

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

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this 23rd day of August, 2010.

