

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 ) FIFRA-07-2008-0035  
FRM Chem, Inc., )  
Keith G. Kastendieck and ) ANSWER TO  
Karlan C. Kastendieck, ) SECOND AMENDED COMPLAINT  
 )  
Respondents. )

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

COME NOW Respondents Keith G. Kastendieck ("Keith") and Karlan C. Kastendieck ("Karlan")(collectively, "Individual Respondents"), by and through their undersigned counsel, and for their Answer to the Second 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 contained in Paragraph 4.

### Section III

#### Statutory & Regulatory Background

5-18. Subsections of Title 7, U.S.C. § 136, subsections of 40 C.F.R. § 152 and subsections of 40 C.F.R. § 167 quoted in Paragraphs 5 through 18 speak for themselves.

### Section IV

#### Factual Allegations

19. Individual Respondents admit the first two sentences of Paragraph 19. Individual Respondents deny the remainder of the paragraph.

Further, Individual Respondents state that they were not a party to any supplemental distribution agreement regarding STERI-DINE DISINFECTANT.

20. Individual Respondents admit the first two sentences of Paragraph 20. Individual Respondents deny the remainder of the paragraph. Further, Individual Respondents state that they were not a party to any supplemental distribution agreement regarding CHLOR 1250.

21. Individual Respondents admit that a representative of MDA conducted an inspection of FRM Chem, Inc.'s facility on the dates stated. Individual Respondents state that the inspections on December 21 and December 28, 2005 were routine inspections. Individual Respondents deny the balance of the allegations in Paragraph 21.

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

23. Individual Respondents deny the allegations contained in Paragraph 23.

24. Individual Respondents admit the allegations contained in Paragraph 24.

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

26. Individual Respondents admit the allegations contained in Paragraph 26.

27. Individual Respondents deny the allegations contained in Paragraph 27.

28. Keith admits the allegations contained in Paragraph 28. Karlan is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 28 and, therefore, denies same.

29. Individual Respondents admit the allegations contained in Paragraph 29.

30. Individual Respondents deny the allegations contained in Paragraph 30.

31. Individual Respondents deny the allegations contained in Paragraph 31.

#### Violations

32. Individual Respondents deny the allegations contained in Paragraph 32.

#### Count 1

33. As and for their Answer to Paragraph 33 of Count 1 of EPA's Second Amended Complaint, Individual Respondents restate, reallege and incorporate by reference its answers to Paragraphs 19 through 32 above as if more fully stated herein.

34. Individual Respondents admit the allegations contained in Paragraph 34.

35. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 35 and, therefore, deny same.

36. Individual Respondents deny the allegations contained in Paragraph 36.

37. Individual Respondents deny the allegations contained in Paragraph 37.

38. Individual Respondents deny the allegations contained in Paragraph 38.

39. Individual Respondents deny the allegations contained in Paragraph 39.

Count 2

40. As and for their Answer to Paragraph 40 of Count 2 of EPA's Second Amended Complaint, Individual Respondents restate, reallege and incorporate by reference its answers to Paragraphs 19 through 39 above as if more fully stated herein.

41. Individual Respondents admit the allegations contained in Paragraph 41.

42. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 42 and, therefore, deny same.

43. Individual Respondents deny the allegations contained in Paragraph 43.

44. Individual Respondents deny the allegations contained in Paragraph 44.

45. Individual Respondents deny the allegations contained in Paragraph 45.

46. Individual Respondents deny the allegations contained in Paragraph 46.

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

As and for their Answer to Paragraphs 47, 52, 57 and 62 of Counts 3 through 6 of EPA's Second Amended Complaint, Individual Respondents adopt their prior answers to the first paragraph of each Count.

Individual Respondents admit the allegations contained in Paragraphs 48, 53, 58 and 63.

Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraphs 49, 54, 59 and 64 and, therefore, deny same.

Individual Respondents deny the allegations contained in Paragraphs 50, 51, 55, 56, 60, 61, 65 and 66.

Counts 7 - 56

Paragraphs 67 - 316

Each of these Counts has five numbered paragraphs which are identical to the McFleeg paragraphs answered above, other than the date and the customer.

The first paragraph of this five numbered paragraph series realleges and incorporates as if fully set forth their prior paragraphs. Likewise, Individual Respondents reallege and incorporate their prior answers to these paragraphs.

The second paragraph of this five numbered paragraph series states that Corporate Respondent FRM Chem, Inc. (not Individual Respondents) sold or distributed a quantity of the product to a specified customer on a specified date. Individual Respondents admit that the Corporate Respondent FRM Chem, Inc. sold or distributed that product to that customer on that date.

The third paragraph of this five numbered paragraph series alleges that on the date of the sale by the Corporate Respondent alleged the product was not properly registered.

Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in the third paragraph of this five numbered paragraph series and, therefore, deny same.

The fourth and fifth paragraphs of this five numbered paragraph series allege Individual Respondents violated FIFRA and propose a penalty for this violation. Individual Respondents deny the fourth and fifth numbered paragraphs of all of these Counts.

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

Count 57

317. As and for their Answer to Paragraph 317 of EPA's Second Amended Complaint, Individual Respondents restate, reallege and incorporate by reference their answers to Paragraphs 19 through 316 above as if more fully stated herein.

318. Individual Respondents admit the allegations contained in Paragraph 318.

319. This paragraph makes no allegation against Individual Respondents and, therefore, they have not answered same. To the extent it might be construed against them in some form or fashion at the hearing, Individual Respondents deny same.

320. Individual Respondents deny the allegations contained in Paragraph 320.

321. Individual Respondents deny the allegations contained in Paragraph 321.

Count 58

322. As and for their Answer to Paragraph 322 of EPA's Second Amended Complaint, Individual Respondents restate, reallege and incorporate by reference their answers to Paragraphs 19 through 321 above as if more fully stated herein.

323. Individual Respondents admit the allegations contained in Paragraph 323.

324. This paragraph makes no allegation against Individual Respondents and, therefore, they have not answered same. To the extent it might be construed against them in some form or fashion at the hearing, Individual Respondents deny same.

325. Individual Respondents deny the allegations contained in Paragraph 325.

326. Individual Respondents deny the allegations contained in Paragraph 326.

**AFFIRMATIVE DEFENSES AND OTHER RESPONSES**

Section V

Total Proposed Penalty

327. 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 cancellation of any registration of this product.

Appropriateness of Proposed Penalty

328. 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.

329. For the same purposes set forth in Paragraphs 327 and 328, 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.

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

331. 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.

332. The proposed penalty of \$377,000 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).

333. 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.

334. As to Individual Respondent Karlan and Counts 57 and 58, he was no longer employed by FRM Chem, Inc. as of October 8, 2008.

Respectfully submitted,

JENKINS & KLING, P.C.

By: \_\_\_\_\_

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Attorneys for Individual Respondents Keith G.  
Kastendieck and Karlan C. Kastendieck

CERTIFICATE OF SERVICE

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

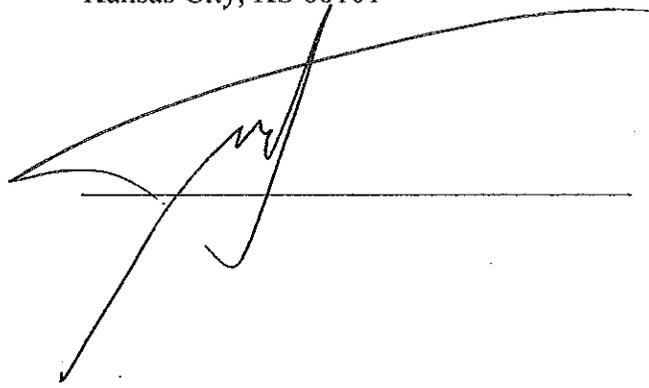
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this 23rd day of August, 2010.

A handwritten signature in black ink, appearing to read "Chris R. Dudding", is written over a horizontal line. The signature is stylized and slanted upwards to the right.