

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) Docket No. FIFRA-07-2008-0035
)
FRM Chem, Inc., Keith G. Kastendieck,) SECOND AMENDED COMPLAINT
and Karlan C. Kastendieck) AND NOTICE OF OPPORTUNITY
) FOR HEARING
)
)
Respondents)

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 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 FRM Chem, Inc. (FRM Chem), a pesticide producer and distributor, located at 50-60 Highline Drive, Union, Missouri, and also Keith G. Kastendieck and Karlan C. Kastendieck, respectively, the Plant Manager and the Sales Manager for Respondent FRM Chem, Inc. 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).

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 cancelled 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 Respondent FRM Chem, Inc. for Respondent FRM Chem, Inc. 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 Respondent FRM Chem, Inc. for Respondent FRM Chem, Inc. 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 FRM Chem's facility at 50 and 60 Hi-line Drive in Union, Missouri, to determine the status of Respondent FRM Chem's compliance with FIFRA.

22. During the inspections referenced in paragraph 21, the MDA representative documented that Respondent FRM Chem, Inc. was holding for sale or distribution STERI-DINE DISINFECTANT, the cancelled pesticide product referenced in paragraph 19, and FRM CHLOR 1250, the cancelled pesticide product referenced in paragraph 20.

23. 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 FRM Chem, Inc.: 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 Respondent FRM Chem, Inc. documented multiple sales by the Respondents of the cancelled pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

24. At all times relevant to the counts in this Complaint, Karlan C. Kastendieck served as the sales manager for FRM Chem, Inc.

25. At all times relevant to the counts in this Complaint, Karlan C. Kastendieck's responsibilities as sales manager for FRM Chem, Inc. included sales management and writing labeling for products produced and distributed by FRM Chem, Inc., as well as responsibility for the daily operations for FRM Chem, Inc. at the facility located at 50 and 60 Hi-line Drive in Union, Missouri.

26. Keith G. Kastendieck was, at all times relevant to the counts in this Complaint, the corporate vice-president of Respondent FRM Chem, Inc. and part owner of the businesses located at 50 and 60 Hi-line Drive in Union, Missouri, including Respondent FRM Chem, Inc.,

and at all times referred to in this Complaint, served as the plant manager of Respondent FRM Chem, Inc.

27. 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 50 and 60 Hi-line Drive facility.

28. At all times referred to in this Complaint, Keith G. Kastendieck and Karlan C. Kastendieck were two of the four principal stockholders, corporate officers, and members of the board of directors for Respondent FRM Chem, Inc.

29. On October 8, 2008, 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 no FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, had been produced or distributed by the Respondent FRM Chem, Inc., or by the other businesses located at 50 and 60 Hi-line Drive in Union, Missouri, since December of 2006.

31. 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 FRM Chem, Inc, 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

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

Count 1

33. The facts stated in paragraphs 19 through 32 are realleged and incorporated as if fully stated herein.

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

35. At the time Respondent FRM Chem, Inc. 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.

36. Respondents 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.

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

38. Respondents 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.

39. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 33 through 38, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 2

40. The facts stated in paragraphs 19 through 39 are realleged and incorporated as if fully stated herein.

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

42. At the time Respondent FRM Chem, Inc. 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.

43. Respondents 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.

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

45. Respondents 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.

46. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 40 through 45, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 3

47. The facts stated in paragraphs 19 through 46 are realleged and incorporated as if fully stated herein.

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

49. On the date of the sale and/or distribution referenced in paragraph 48, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

50. For the sale or distribution referenced in paragraph 48, 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.

51. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 47 through 50, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 4

52. The facts stated in paragraphs 19 through 51 are realleged and incorporated as if fully stated herein.

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

54. On the date of the sale and/or distribution referenced in paragraph 53, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

55. For the sale or distribution referenced in paragraph 53, 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.

56. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 52 through 55, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 5

57. The facts stated in paragraphs 19 through 56 are realleged and incorporated as if fully stated herein.

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

59. On the date of the sale and/or distribution referenced in paragraph 58, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

60. For the sale or distribution referenced in paragraph 58, 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.

61. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 57 through 60, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 6

62. The facts stated in paragraphs 19 through 61 are realleged and incorporated as if fully stated herein.

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

64. On the date of the sale and/or distribution referenced in paragraph 63, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

65. For the sale or distribution referenced in paragraph 63, 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.

66. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 62 through 65, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 7

67. The facts stated in paragraphs 19 through 66 are realleged and incorporated as if fully stated herein.

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

69. On the date of the sale and/or distribution referenced in paragraph 68, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

70. For the sale or distribution referenced in paragraph 68, 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.

71. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 67 through 70, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 8

72. The facts stated in paragraphs 19 through 71 are realleged and incorporated as if fully stated herein.

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

74. On the date of the sale and/or distribution referenced in paragraph 73, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

75. For the sale or distribution referenced in paragraph 73, 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.

76. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 72 through 75, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 9

77. The facts stated in paragraphs 19 through 76 are realleged and incorporated as if fully stated herein.

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

79. On the date of the sale and/or distribution referenced in paragraph 78, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

80. For the sale or distribution referenced in paragraph 78, 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 77 through 80, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 10

82. The facts stated in paragraphs 19 through 81 are realleged and incorporated as if fully stated herein.

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

84. On the date of the sale and/or distribution referenced in paragraph 83, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

85. For the sale or distribution referenced in paragraph 83, 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.

86. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 82 through 85, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 11

87. The facts stated in paragraphs 19 through 86 are realleged and incorporated as if fully stated herein.

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

89. On the date of the sale and/or distribution referenced in paragraph 88, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

90. For the sale or distribution referenced in paragraph 88, 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.

91. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 87 through 90, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 12-16 – Sales/Distributions to Dairy Concepts

Count 12

92. The facts stated in paragraphs 19 through 91 are realleged and incorporated as if fully stated herein.

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

94. On the date of the sale and/or distribution referenced in paragraph 93, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

95. For the sale or distribution referenced in paragraph 93, 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.

96. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 92 through 95, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 13

97. The facts stated in paragraphs 19 through 96 are realleged and incorporated as if fully stated herein.

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

99. On the date of the sale and/or distribution referenced in paragraph 98, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

100. For the sale or distribution referenced in paragraph 98, 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.

101. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 97 through 100, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 14

102. The facts stated in paragraphs 19 through 101 are realleged and incorporated as if fully stated herein.

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

104. On the date of the sale and/or distribution referenced in paragraph 103, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

105. For the sale or distribution referenced in paragraph 103, 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.

106. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 102 through 105, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 15

107. The facts stated in paragraphs 19 through 106 are realleged and incorporated as if fully stated herein.

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

109. On the date of the sale and/or distribution referenced in paragraph 108, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

110. For the sale or distribution referenced in paragraph 108, 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.

111. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 107 through 110, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 16

112. The facts stated in paragraphs 19 through 111 are realleged and incorporated as if fully stated herein.

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

114. On the date of the sale and/or distribution referenced in paragraph 113, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

115. For the sale or distribution referenced in paragraph 113, 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.

116. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 112 through 115, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 17

117. The facts stated in paragraphs 19 through 116 are realleged and incorporated as if fully stated herein.

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

119. On the date of the sale and/or distribution referenced in paragraph 118, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

120. For the sale or distribution referenced in paragraph 118, 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.

121. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 117 through 120, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 18

122. The facts stated in paragraphs 19 through 121 are realleged and incorporated as if fully stated herein.

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

124. On the date of the sale and/or distribution referenced in paragraph 123, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

125. For the sale or distribution referenced in paragraph 123, 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.

126. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 122 through 125, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 19

127. The facts stated in paragraphs 19 through 126 are realleged and incorporated as if fully stated herein.

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

129. On the date of the sale and/or distribution referenced in paragraph 128, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

130. For the sale or distribution referenced in paragraph 128, 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.

131. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 127 through 130, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 20

132. The facts stated in paragraphs 19 through 131 are realleged and incorporated as if fully stated herein.

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

134. On the date of the sale and/or distribution referenced in paragraph 133, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

135. For the sale or distribution referenced in paragraph 133, 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.

136. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 132 through 135, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 21

137. The facts stated in paragraphs 19 through 136 are realleged and incorporated as if fully stated herein.

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

139. On the date of the sale and/or distribution referenced in paragraph 138, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

140. For the sale or distribution referenced in paragraph 138, 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.

141. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 137 through 140, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 22

142. The facts stated in paragraphs 19 through 141 are realleged and incorporated as if fully stated herein.

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

144. On the date of the sale and/or distribution referenced in paragraph 143, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

145. For the sale or distribution referenced in paragraph 143, 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.

146. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 142 through 145, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 23

147. The facts stated in paragraphs 19 through 146 are realleged and incorporated as if fully stated herein.

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

149. On the date of the sale and/or distribution referenced in paragraph 148, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

150. For the sale or distribution referenced in paragraph 148, 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.

151. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 147 through 150, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 24

152. The facts stated in paragraphs 19 through 151 are realleged and incorporated as if fully stated herein.

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

154. On the date of the sale and/or distribution referenced in paragraph 153, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

155. For the sale or distribution referenced in paragraph 153, 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.

156. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 152 through 155, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 25

157. The facts stated in paragraphs 19 through 156 are realleged and incorporated as if fully stated herein.

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

159. On the date of the sale and/or distribution to L W Chemicals referenced in paragraph 158, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

160. For the sale or distribution referenced in paragraph 158, 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.

161. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 157 through 160, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 26-27

Sales/Distributions to Preston Dairy Supply

Count 26

162. The facts stated in paragraphs 19 through 161 are realleged and incorporated as if fully stated herein.

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

164. On the date of the sale and/or distribution referenced in paragraph 163, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

165. For the sale or distribution referenced in paragraph 163, 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.

166. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 162 through 165, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 27

167. The facts stated in paragraphs 19 through 166 are realleged and incorporated as if fully stated herein.

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

169. On the date of the sale and/or distribution referenced in paragraph 168, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

170. For the sale or distribution referenced in paragraph 168, 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.

171. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 167 through 170, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 28

172. The facts stated in paragraphs 19 through 171 are realleged and incorporated as if fully stated herein.

173. On or about July 7, 2004, Respondent FRM Chem, Inc. 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.

174. On the date of the sale and/or distribution referenced in paragraph 173, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

175. For the sale or distribution referenced in paragraph 173, 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.

176. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 172 through 175, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 29

177. The facts stated in paragraphs 19 through 176 are realleged and incorporated as if fully stated herein.

178. On or about August 4, 2004, Respondent FRM Chem, Inc. 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.

179. On the date of the sale and/or distribution referenced in paragraph 178, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

180. For the sale or distribution referenced in paragraph 178, 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.

181. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 177 through 180 it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 30

182. The facts stated in paragraphs 19 through 181 are realleged and incorporated as if fully stated herein.

183. On or about October 4, 2004, Respondent FRM Chem, Inc. 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.

184. On the date of the sale and/or distribution to referenced in paragraph 183, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

185. For the sale or distribution referenced in paragraph 183, 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.

186. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 182 through 185, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 31

187. The facts stated in paragraphs 19 through 186 are realleged and incorporated as if fully stated herein.

188. On or about November 1, 2004, Respondent FRM Chem, Inc. 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.

189. On the date of the sale and/or distribution referenced in paragraph 188, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

190. For the sale or distribution referenced in paragraph 188, 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.

191. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 187 through 190, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 32 – Sale/Distribution to Charles Rademacher

192. The facts stated in paragraphs 19 through 191 are realleged and incorporated as if fully stated herein.

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

194. On the date of the sale and/or distribution referenced in paragraph 193, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

195. For the sale or distribution referenced in paragraph 193, 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.

196. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 192 through 195, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 33-41 – Sales/Distributions to Riegel Farms

Count 33

197. The facts stated in paragraphs 19 through 196 are realleged and incorporated as if fully stated herein.

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

199. On the date of the sale and/or distribution referenced in paragraph 198, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

200. For the sale or distribution referenced in paragraph 198, 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.

201. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 197 through 200, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 34

202. The facts stated in paragraphs 19 through 201 are realleged and incorporated as if fully stated herein.

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

204. On the date of the sale and/or distribution referenced in paragraph 203, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

205. For the sale or distribution referenced in paragraph 203, 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.

206. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 202 through 205, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 35

207. The facts stated in paragraphs 19 through 206 are realleged and incorporated as if fully stated herein.

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

209. On the date of the sale and/or distribution referenced in paragraph 208, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

210. For the sale or distribution referenced in paragraph 208, 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.

211. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 207 through 210, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 36

212. The facts stated in paragraphs 19 through 211 are realleged and incorporated as if fully stated herein.

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

214. On the date of the sale and/or distribution referenced in paragraph 213, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

215. For the sale or distribution referenced in paragraph 213, 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.

216. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 212 through 215, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 37

217. The facts stated in paragraphs 19 through 216 are realleged and incorporated as if fully stated herein.

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

219. On the date of the sale and/or distribution referenced in paragraph 218, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

220. For the sale or distribution referenced in paragraph 218, 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.

221. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 217 through 220, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 38

222. The facts stated in paragraphs 19 through 221 are realleged and incorporated as if fully stated herein.

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

224. On the date of the sale and/or distribution referenced in paragraph 223, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

225. For the sale or distribution referenced in paragraph 223, 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.

226. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 222 through 225, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 39

227. The facts stated in paragraphs 19 through 226 are realleged and incorporated as if fully stated herein.

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

229. On the date of the sale and/or distribution referenced in paragraph 228, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

230. For the sale or distribution referenced in paragraph 228, 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.

231. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 227 through 230, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 40

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

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

234. On the date of the sale and/or distribution referenced in paragraph 233, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

235. For the sale or distribution referenced in paragraph 233, 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.

236. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 232 through 235, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 41

237. The facts stated in paragraphs 19 through 236 are realleged and incorporated as if fully stated herein.

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

239. On the date of the sale and/or distribution referenced in paragraph 238, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

240. For the sale or distribution referenced in paragraph 238, 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.

241. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 237 through 240, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 42

242. The facts stated in paragraphs 19 through 241 are realleged and incorporated as if fully stated herein.

243. On or about July 31, 2004, Respondent FRM Chem, Inc. 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.

244. On the date of the sale and/or distribution referenced in paragraph 243, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

245. For the sale or distribution referenced in paragraph 243, 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.

246. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 242 through 245, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 43

247. The facts stated in paragraphs 19 through 246 are realleged and incorporated as if fully stated herein.

248. On or about January 4, 2005, Respondent FRM Chem, Inc. 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.

249. On the date of the sale and/or distribution referenced in paragraph 248, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

250. For the sale or distribution referenced in paragraph 248, 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.

251. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 247 through 250, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 44

252. The facts stated in paragraphs 19 through 251 are realleged and incorporated as if fully stated herein.

253. On or about August 3, 2005, Respondent FRM Chem, Inc. 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.

254. On the date of the sale and/or distribution referenced in paragraph 253, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

255. For the sale or distribution referenced in paragraph 253, 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.

256. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 252 through 255, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 45

257. The facts stated in paragraphs 19 through 256 are realleged and incorporated as if fully stated herein.

258. On or about October 6, 2005, Respondent FRM Chem, Inc. 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.

259. On the date of the sale and/or distribution referenced in paragraph 258, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

260. For the sale or distribution referenced in paragraph 258, 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.

261. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 257 through 260, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 46

262. The facts stated in paragraphs 19 through 261 are realleged and incorporated as if fully stated herein.

263. On or about April 5, 2006, Respondent FRM Chem, Inc. 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.

264. On the date of the sale and/or distribution referenced in paragraph 263, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

265. For the sale or distribution referenced in paragraph 263, 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.

266. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 262 through 265, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 47

267. The facts stated in paragraphs 19 through 266 are realleged and incorporated as if fully stated herein.

268. On or about October 5, 2006, Respondent FRM Chem, Inc. 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.

269. On the date of the sale and/or distribution referenced in paragraph 268, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

270. For the sale or distribution referenced in paragraph 268, 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.

271. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 267 through 270, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 48

272. The facts stated in paragraphs 19 through 271 are realleged and incorporated as if fully stated herein.

273. On or about November 2, 2006, Respondent FRM Chem, Inc. 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.

274. On the date of the sale and/or distribution referenced in paragraph 273, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

275. For the sale or distribution referenced in paragraph 273, 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.

276. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 272 through 275, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 49

277. The facts stated in paragraphs 19 through 276 are realleged and incorporated as if fully stated herein.

278. On or about September 4, 2007, Respondent FRM Chem, Inc. 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.

279. On the date of the sale and/or distribution referenced in paragraph 278, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

280. For the sale or distribution referenced in paragraph 278, 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.

281. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 277 through 280, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 50

282. The facts stated in paragraphs 19 through 281 are realleged and incorporated as if fully stated herein.

283. On or about October 3, 2007, Respondent FRM Chem, Inc. 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.

284. On the date of the sale and/or distribution referenced in paragraph 283, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

285. For the sale or distribution referenced in paragraph 283, 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.

286. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 282 through 285, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 51

287. The facts stated in paragraphs 19 through 286 are realleged and incorporated as if fully stated herein.

288. On or about December 20, 2007, Respondent FRM Chem, Inc. 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.

289. On the date of the sale and/or distribution referenced in paragraph 288, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

290. For the sale or distribution referenced in paragraph 288, 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.

291. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136i, and based on the facts stated in paragraphs 287 through 290, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 52

292. The facts stated in paragraphs 19 through 291 are realleged and incorporated as if fully stated herein.

293. In January 2008, Respondent FRM Chem, Inc. 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.

294. On the date of the sale and/or distribution referenced in paragraph 293, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

295. For the sale or distribution referenced in paragraph 293, 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.

296. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136i, and based on the facts stated in paragraphs 292 through 295, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 53

297. The facts stated in paragraphs 19 through 296 are realleged and incorporated as if fully stated herein.

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

299. On the date of the sale and/or distribution referenced in paragraph 298, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

300. For the sale or distribution referenced in paragraph 298, 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.

301. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 297 through 300, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 54

302. The facts stated in paragraphs 19 through 301 are realleged and incorporated as if fully stated herein.

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

304. On the date of the sale and/or distribution referenced in paragraph 303, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

305. For the sale or distribution referenced in paragraph 303, 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.

306. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 302 through 305, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 55

307. The facts stated in paragraphs 19 through 306 are realleged and incorporated as if fully stated herein.

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

309. On the date of the sale and/or distribution referenced in paragraph 308, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

310. For the sale or distribution referenced in paragraph 308, 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.

311. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 307 through 310, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 56

312. The facts stated in paragraphs 19 through 311 are realleged and incorporated as if fully stated herein.

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

314. On the date of the sale and/or distribution referenced in paragraph 313, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

315. For the sale or distribution referenced in paragraph 313, 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.

316. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 312 through 315, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

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

Count 57

317. The facts stated in paragraphs 19 through 316 are realleged and incorporated as if fully stated herein.

318. On October 8, 2008, Respondent FRM Chem, Inc. 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 STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

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

320. For the sale or distribution referenced in paragraph 319, Respondents 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.

321. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 317 through 320, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 58

322. The facts stated in paragraphs 19 through 321 are realleged and incorporated as if fully stated herein.

323. On October 8, 2008, Respondent FRM Chem, Inc. 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 STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

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

325. For the sale or distribution referenced in paragraph 324, Respondents 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.

326. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 322 through 325, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Section V

Total Proposed Penalty

327. 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 Respondents for the above-described violations.

Appropriateness of Proposed Penalty

328. 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 FRM Chem, the effect of the proposed penalty on Respondent FRM Chem'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)).

329. For purposes of calculating the proposed penalty, Respondents were 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 FRM Chem'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.

330. 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 Respondents to continue in business.

331. 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.

332. 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.

333. 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.

334. 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

335. 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:

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.

336. 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).

337. 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.

338. 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

339. 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 Respondents' business, the gravity of the violation, and the effect of the proposed penalty on Respondents' 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.

340. 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.

341. 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: