

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	FIFRA-07-2008-0036
Advanced Products Technology, Inc.,	)	
Keith G. Kastendieck and	)	ANSWER TO
Karlan 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 Karlan C. Kastendieck ("Karlan")(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 is without sufficient information, knowledge and belief to either admit or deny that he was

an officer, director and shareholder of the corporation during the entire time set forth in the First Amended Complaint and, therefore, denies same.

### Section III

#### Statutory & Regulatory Background

5-13. Title 7, U.S.C. § 136 and 40 C.F.R. § 152 quoted in Paragraphs 5 through 13 speak for themselves.

### Section IV

#### Factual Allegations

14. Individual Respondents admit the allegations contained in Paragraph 14.

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

16. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 16 and, therefore, deny same.

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

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

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

20. Keith admits the allegations contained in Paragraph 20. Karlan is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 20 and, therefore, denies same.

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.

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

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

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

28. Individual Respondents deny the allegations contained in Paragraph 28.

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

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

31. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 31 and, therefore, deny same.

32. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 32 and, therefore, deny same.

33. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 33 and, therefore, deny same.

34. Individual Respondents deny 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 are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 36 and, therefore, deny same.

37. Individual Respondents admit the allegations contained in Paragraph 37. Further, Individual Respondents state that during the entire time period set forth in the First Amended Complaint, a customer could purchase sodium hypochlorite at any discount store or retail grocery anywhere in the country if they desired to do so.

38. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in Paragraph 38 and, therefore, deny same.

39-46. As these allegations cover all labels of Corporate Respondents as well as FRM Chem, Inc. during an unspecified period of time, Individual Respondents deny same.

#### Violations

47. Individual Respondents deny the allegations contained in Paragraph 47.

#### Counts 1 - 4 Paragraphs 48 - 67

These Counts, 1 through 4 covering paragraphs 48 through 67, each have five (5) numbered paragraphs per Count in a series.

The first numbered paragraph simply realleges prior paragraphs. Likewise, Individual Respondents reallege their prior paragraphs as their Answer.

The second numbered paragraph in the series alleges that Corporate Respondent on a specified date sold or distributed a quantity of STERI-DINE DISINFECTANT to a specified customer. Individual Respondents admit the second paragraph in the series.

The third numbered paragraph in the series allege the product was not registered. Individual Respondents are without sufficient knowledge, information or belief as to the allegations contained in the third paragraphs in the series and, therefore, deny same.

The fourth and fifth numbered paragraphs in the series allege that Individual Respondents violated FIFRA and propose a penalty in that regard. Individual Respondents deny the fourth and fifth paragraphs in the series.

Counts 5 - 9  
Paragraphs 68-102

Each of these Counts has seven paragraphs which are virtually identical with the exception of the date.

Individual Respondents realleged their numbered paragraph answers as their answers to the first paragraph in the series.

The second paragraph in the series makes no allegation against the Individual Respondents. In the event, at the hearing, this allegation is construed against Individual Respondents for any reason, it is denied.

The third through the seventh paragraphs of the series are denied by Individual Respondents.

**AFFIRMATIVE DEFENSES AND OTHER RESPONSES**

Section V

Total Proposed Penalty

103. 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. or APT of any cancellation of any registration of this product.

Appropriateness of Proposed Penalty

104. 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. or APT that the registration had been cancelled as Complainant requires.

105. For the same purposes set forth in Paragraphs 104 and 105, 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.

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

107. 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.

108. 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).

109. 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.

110. As to Individual Respondent Karlan and Counts 5 through 9, he was no longer employed by Corporate Respondents after August of 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.