BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re: FRM Chem, Inc., a.k.a Industrial Specialties	FIFRA Appeal No. 05-01
Docket No. FIFRA-07-2004-0041	

ORDER ON FAILURE TO FILE A RESPONSE

On May 5, 2005, the Environmental Protection Agency, Region 7, filed an appeal brief with the Environmental Appeals Board ("Board") in connection with Administrative Law Judge William B. Moran's February 16, 2005 Initial Decision in the above-captioned case.[1] Specifically, Region 7's appeal challenges the amount of the penalty the Initial Decision assessed against FRM. *See* Brief of the Complainant-Appellant ("Region 7's Brief") at 1.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. pt. 22, "[w]ithin 20 days of service of notices of appeal and briefs * * * any other party or non-party participant may file with the [Board] an original and one copy of a response brief responding to argument raised by the appellant." 40 C.F.R. § 22.30(a)(2). The deadline for the filing of a response brief in this case expired on May 30, 2005, which reflects the 20-day period just cited and an additional five days

[1] This case involves an penalty action initiated by Region 7 under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 et. seq., against FRM Chem, Inc. ("FRM"), also known as Industrial Specialties. The underlying complaint alleged that FRM "violated FIFRA by engaging in the distribution or sale of an unregistered and misbranded pesticide." Region 7's Brief at 3.

because the brief was served by mail (*see* 40 C.F.R. § 22.7(c)). To date, FRM has not filed a response to Region 7's appeal.[2]

Having received no response brief from the Appellee, the Board intends to proceed with its evaluation of this appeal based on the record before it.

So ordered.

Dated: JUN 23 2005

ENVIRONMENTAL APPEALS BOARD

Edward E. Reich
Environmental Appeals Judge

[2] FRM has made an appearance in this appeal, responding to Region 7's initial motion for extension of time and to an earlier Board Order regarding Region 7's request for clarification of the administrative record. *See* Motion for Denial fo Extension of Time to Appeal Brief (Mar. 24, 2005); Order Regarding Motion for Clarification of the Record (Mar. 25, 2005).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order on Failure to File a Response** in the matter of *FRM Chem, Inc.*, FIFRA Appeal No. 05-01, were sent to the following persons in the manner indicated:

By Certified Mail Return Receipt Requested:

Raymond E. Kastendieck
President, FRM Chem, Inc.
P.O. Box 207
Washington, MO 63090

By Pouch mail:

Chris R. Dudding
Office of Regional Counsel
U.S. EPA, Region 7
901 North Fifth Street
Kansas City, Kansas 66101

Dated: JUN 23 2005

Annette Duncan
Secretary

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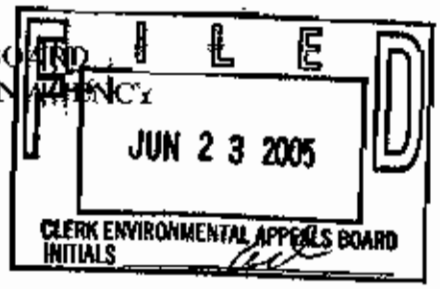

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