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ENVIR. APPEALS BOARD

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD**

**WASHINGTON, DC**

**In the Matter of** )  
 )  
**FRM Chem, Inc.,** )  
**a.k.a. Industrial Specialties** )  
 )  
**Respondent** )

**Docket No. FIFRA-07-2004-0041**

**NOTICE OF APPEAL**

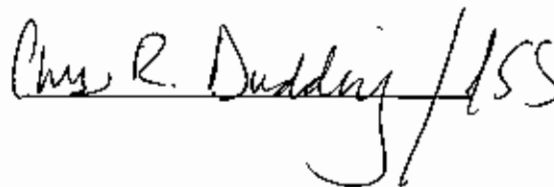
Pursuant to Section 22.30(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. § 22.30(a), the United States Environmental Protection Agency ("Agency," "Appellant" or "EPA"), files the instant Notice of Appeal, seeking review of the Initial Decision for the above-referenced case issued by the Presiding Officer on February 16, 2005, and filed with the Regional Hearing Clerk on February 18, 2005. EPA has not filed an accompanying appellate brief with the filing of this Notice of Appeal but has filed, via facsimile, a Motion for Extension of Time to File Appeal Brief that articulates the reasons supporting EPA's request for an extension.

In the Complaint, EPA alleged that Respondent, FRM Chem, Inc., a.k.a. Industrial Specialties ("Respondent" or "FRM") violated the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C §§ 136 et seq., by engaging in the distribution or sale of an unregistered and misbranded pesticide called Root Eater. The Complaint alleged three violations of FIFRA and sought the assessment of \$5,500 per count. The Presiding Officer found Respondent liable, as alleged in the Complaint, but substantially deviated from the applicable Enforcement Response Policy ("ERP") and the Agency's proposed penalty of \$16,500, assessing a total penalty of \$1,800 for the three violations.

The Agency seeks review of the Presiding Officer's penalty assessment and the grounds upon which the Presiding Officer relied in concluding that a total penalty of \$1,800 was appropriate for the violations.

Respectfully submitted,

Chris R. Dudding  
Assistant Regional Counsel  
Complainant-Appellant

By: /SS

OF COUNSEL:

Gary Jones  
Ilana Saltzbart  
Carl Eichenwald  
Office of Enforcement and Compliance Assurance

Re: FRM Chem, Inc., a.k.a. Industrial Specialties  
Docket No. FIFRA-07-2004-0041

CERTIFICATE OF SERVICE

I hereby certify that today I filed via hand the original and five copies of the Notice of Appeal in the above-captioned matter with the U.S. EPA Environmental Appeals Board, and also, copies of this document were mailed today via First-Class Mail to the following:

Honorable William B. Moran  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

Raymond E. Kastendieck  
President  
FRM Chem, Inc.  
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50 Hiline Dr.  
Washington, MO 63090

Dated: March 18, 2005

