

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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

BEFORE THE ADMINISTRATOR

10 JUN -3 PM 3:46

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF

Custom Compounders, Inc.,  
Advanced Products Technology, Inc.,  
Keith G. Kastendieck, and Karlan C.  
Kastendieck

Respondents

) Docket No. FIFRA-07-2009-0042  
)  
) FIRST AMENDED COMPLAINT  
) AND NOTICE OF OPPORTUNITY  
) FOR HEARING  
)  
)  
)

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. § 136f.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has 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 Custom Compounders, Inc., a pesticide producer and distributor and a company incorporated under the laws of the State of Georgia, located at 50 and 60 Highline Drive in Union, Missouri; and Advanced Products Technology, Inc., a pesticide producer and distributor and a company incorporated under the laws of the State of Missouri, also located at 50 and 60 Highline Drive in Union, Missouri; and also Keith G. Kastendieck and Karlan C. Kastendieck, who are respectively, the Plant Manager and the Sales Manager for Respondent

Advanced Products Technology, Inc., as well as officers, directors and shareholders of the two Respondent corporations. 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(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
6. 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).
7. 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.
8. 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.
9. 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.
10. 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.
11. 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).

#### Section IV

##### Factual Allegations

12. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to Intercon Chemical Company (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 FRM Chem, Inc. (FRM Chem) for FRM Chem 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.
13. At all times relevant to the counts alleged in this Complaint, both FRM Chem and the two corporate Respondents shared the same physical facility at 50 and 60 Highline Drive in Union, Missouri.
14. Respondents Custom Compounders, Inc., Advanced Products Technology, Inc., Keith G. Kastendieck, and Karlan C. Kastendieck, 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).
15. Keith G. Kastendieck and Karlan C. Kastendieck are two of the four principal stockholders, corporate officers, and members of the board of directors for FRM Chem and for Respondent Advanced Products Technology, Inc., and are two of the six principal stockholders, corporate officers, and members of the board of directors for Respondent Custom Compounders, Inc.
16. Karlan C. Kastendieck was, at all times referred to in this Complaint, the sales manager for the businesses operating at 50 and 60 Hi-line Drive in Union, Missouri.
17. Karlan C. Kastendieck's responsibilities as sales manager included sales management and writing labeling for products, as well as responsibility for the daily operations at the facility shared by FRM Chem and by Respondents Advanced Products Technology, Inc. and Custom Compounders, Inc.
18. Keith G. Kastendieck has been employed by FRM Chem since approximately 1982 and was, at all times referred to in this Complaint, the plant manager and part owner of the businesses located at 50 and 60 Hi-line Drive in Union, Missouri, including FRM Chem and Respondents Advanced Products Technology, Inc. and Custom Compounders, Inc.
19. 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 facility shared by

FRM Chem and by Respondents Advanced Products Technology, Inc. and Custom Compounders, Inc.

20. On or about October 8 and October 15, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections and collected documents at the facility at 50 and 60 Hi-line Drive in Union, Missouri, to determine the status of Respondents' compliance with FIFRA.

21. On October 8, 2008, Keith G. Kastendieck informed an inspector for the MDA that neither FRM Chem nor the other corporations run by the Kastendieck family at 50 and 60 Hi-line Drive in Union, Missouri, including Respondents Advanced Products Technology, Inc., and Custom Compounders, Inc. had produced, sold, or distributed the pesticide FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 since December 2006.

#### Violations

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

#### Counts 1-5 – Sales/Distributions to Franklin County Humane Society

##### Count 1

23. The facts stated in paragraphs 12 through 22 are realleged and incorporated as if fully stated herein.

24. On or about November 14, 2007, Respondents Custom Compounders, Inc. and Advanced Products Technology, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to the Franklin County Humane Society.

25. The sale and/or distribution referenced in paragraph 24 is documented by Invoice No. 22129.

26. Item numbers starting with the prefix "1004-" on Respondents' sales invoices designate the 12.5% sodium hypochlorite product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

27. The item number for the product "Sodium Hypo 55 Gal Drum" on invoice number 22129 is 1004024000.

28. On the date of the sale and/or distribution referenced in paragraph 24, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

29. For the sale or distribution referenced in paragraph 24, 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.

30. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 23 through 29, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 2

31. The facts stated in paragraphs 12 through 30 are realleged and incorporated as if fully stated herein.

32. On or about May 22, 2008, Respondents Custom Compounders, Inc. and Advanced Products Technology, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to the Franklin County Humane Society in Union, Missouri.

33. The sale and/or distribution referenced in paragraph 32 is documented by Invoice No. 22329.

34. Item numbers starting with the prefix "1004-" on Respondents' sales invoices designate the 12.5% sodium hypochlorite product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

35. The item number for the product "Sodium Hypo 55 Gal Drum" on invoice number 22329 is 1004024000.

36. On the date of the sale and/or distribution referenced in paragraph 32, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

37. For the sale or distribution referenced in paragraph 32, 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.

38. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 31 through 37, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 3

39. The facts stated in paragraphs 12 through 38 are realleged and incorporated as if fully stated herein.

40. On or about June 19, 2008, Respondents Custom Compounders, Inc. and Advanced Products Technology, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to the Franklin County Humane Society in Union, Missouri.

41. The sale and/or distribution referenced in paragraph 40 is documented by Invoice No. 22342.

42. Item numbers starting with the prefix "1004-" on Respondents' sales invoices designate the 12.5% sodium hypochlorite product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

43. The item number for the product "Sodium Hypo 55 Gal Drum" on invoice number 22342 is 1004024000.

44. On the date of the sale and/or distribution referenced in paragraph 40, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

45. For the sale or distribution referenced in paragraph 40, 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.

46. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 39 through 45, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 4

47. The facts stated in paragraphs 12 through 46 are realleged and incorporated as if fully stated herein.

48. On or about July 24, 2008, Respondents Custom Compounders, Inc. and Advanced Products Technology, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to the Franklin County Humane Society.

49. The sale and/or distribution referenced in paragraph 48 is documented by Invoice No. 22361.
50. Item numbers starting with the prefix "1004-" on Respondents' sales invoices designate the 12.5% sodium hypochlorite product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.
51. The item number for the product "Sodium Hypo 55 Gal Drum" on invoice number 22361 is 1004024000.
52. 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.
53. 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.
54. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 47 through 53, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 5

55. The facts stated in paragraphs 12 through 54 are realleged and incorporated as if fully stated herein.
56. On or about September 29, 2008, Respondents Custom Compounds, Inc. and Advanced Products Technology, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to the Franklin County Humane Society.
57. The sale and/or distribution referenced in paragraph 56 is documented by Invoice No. 22395.
58. Item numbers starting with the prefix "1004-" on Respondents' sales invoices designate the 12.5% sodium hypochlorite product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.
59. The item number for the product "Sodium Hypo 55 Gal Drum" on invoice number 22395 is 1004024000.

60. On the date of the sale and/or distribution referenced in paragraph 56, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

61. For the sale or distribution referenced in paragraph 56, 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.

62. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 55 through 61, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

## Section V

### Total Proposed Penalty

63. 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 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 Thirty-Two Thousand Five Hundred Dollars (\$32,500) against Respondents for the above-described violations.

### Appropriateness of Proposed Penalty

64. 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, the effect of the proposed penalty on Respondent'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)).

65. For purposes of calculating the proposed penalty, Respondents Custom Compounds, Inc. and Advanced Products Technology, Inc. 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 Respondents' gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

66. 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.

67. 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.

68. 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.

69. Payment of the total penalty - \$32,500 - 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.

70. 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

71. 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.

72. 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).

73. 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.

74. 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

75. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent 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' businesses, 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

76. 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.

77. 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 5<sup>th</sup> 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 14<sup>th</sup> Street  
Suite 350  
Washington, D.C. 20005

Via UPS, to:

U.S. Environmental Protection Agency  
Office of the Hearing Clerk  
1099 14<sup>th</sup> Street  
Suite 350  
Washington, D.C. 20005

June 3, 2010  
Date

[Signature]  
Name: