

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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

BEFORE THE ADMINISTRATOR

09 DEC 17 AM 10:34  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
 ) FIFRA-07-2008-0036  
Advanced Products Technology, Inc., )  
 ) ANSWER  
Respondent. )

**ANSWER OF RESPONDENT ADVANCED PRODUCTS TECHNOLOGY, INC.**

COMES NOW Respondent Advanced Products Technology, Inc. ("APT"), by and through its undersigned counsel, and for its Answer to the Complaint filed by United States Environmental Protection Agency ("EPA"), states the following:

Section I

Jurisdiction

1. APT admits the allegations contained in Paragraph 1.
2. APT is without sufficient knowledge, information or belief to admit or deny the allegations contained in Paragraph 2 and, therefore, denies same.

Section II

Parties

3. APT admits the allegations contained in Paragraph 3.
4. APT is without sufficient knowledge, information or belief to admit or deny the allegations contained in Paragraph 4 and, therefore, denies same.

### Section III

#### Statutory & Regulatory Background

5-10. Title 7, U.S.C. § 136 quoted in Paragraphs 5 through 10 speak for themselves.

### Section IV

#### Factual Allegations

11. APT admits the first three (3) full sentences of Paragraph 11.

Respondent denies any knowledge whatsoever that the registration of Steri-Dine was cancelled or that supplemental distribution agreements were cancelled by the EPA on July 19, 1995.

Respondent denies any knowledge whatsoever that sales of existing stock of Steri-Dine were prohibited after January 15, 1996.

Respondent did become aware of these cancellations and prohibitions when a Stop Sale Order was served on Respondent on or about October 8, 2008.

12. APT admits APT was, at all times referred to in the Complaint, a Missouri corporation qualified to do business in the State of Missouri. Respondent denies the allegation as to FRM Chem, Inc. FRM became administratively dissolved as a Missouri corporation during the period of time set forth in the Complaint.

13. APT admits the allegations contained in Paragraph 13.

14. APT admits that a representative of the Missouri Department of Agriculture (MDA) conducted a "Routine PEI" of FRM Chem's (co-respondent in the consolidated cases) facilities on December 21 and 28, 2005. Further, at the time of the inspections, the MDA inspector documented that "no violations were suspected".

Respondent was never told the Steri-Dine registrations or supplemental registrations had been cancelled by the MDA representative and the company was not served with a No Sale Order at that time.

15. APT is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 15 and, therefore, denies same. APT specifically denies that the MDA representative ever told Respondent that the Steri-Dine registration was cancelled. Moreover, no Stop Sale Order was ever delivered to APT regarding Steri-Dine in 2005, 2006 or 2007.

16. APT is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 16 and, therefore, denies same.

#### Violations

17. APT denies the FIFRA allegations contained in Paragraph 17.

#### Count 1

18. As and for its Answer to Paragraph 18 of Count 1 of EPA's Complaint, Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 11 through 16 above as if more fully stated herein.

19. APT admits the allegations contained in Paragraph 19.

20. Respondent was without any knowledge whatsoever that the EPA Reg. No. 48211-70-10366 was cancelled as of August 27, 2007.

21. APT denies the allegations contained in Paragraph 21.

22. APT denies the allegations contained in Paragraph 22.

Count 2

23. As and for its Answer to Paragraph 23 of Count 2 of EPA's Complaint, Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 11 through 16 above as if more fully stated herein.

24. APT admits the allegations contained in Paragraph 24.

25. Respondent was without any knowledge whatsoever that the EPA Reg. No. 48211-70-10366 was cancelled as of September 28, 2007.

26. APT denies the allegations contained in Paragraph 26.

27. APT denies the allegations contained in Paragraph 27.

Count 3

28. As and for its Answer to Paragraph 28 of Count 3 of EPA's Complaint, Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 11 through 16 above as if more fully stated herein.

29. APT admits the allegations contained in Paragraph 29.

30. Respondent was without any knowledge whatsoever that the EPA Reg. No. 48211-70-10366 was cancelled as of October 3, 2007.

31. APT denies the allegations contained in Paragraph 31.

32. APT denies the allegations contained in Paragraph 32.

Count 4

33. As and for its Answer to Paragraph 33 of Count 4 of EPA's Complaint, Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 11 through 16 above as if more fully stated herein.

34. APT admits the allegations contained in Paragraph 34.

35. Respondent was without any knowledge whatsoever that the EPA Reg. No. 48211-70-10366 was cancelled as of December 19, 2007.

36. APT denies the allegations contained in Paragraph 36.

37. APT denies the allegations contained in Paragraph 37.

#### Section V

##### Total Proposed Penalty

38. Respondent APT believes no penalty should be assessed under the facts of this case. However, the assessment of the maximum statutory penalty for each violation is onerous and burdensome to this small family owned company.

##### Appropriateness of Proposed Penalty

39. As stated in Paragraph 38, Respondent APT does not believe the proposed penalty is appropriate.

40. Respondent denies \$1,000,000.00 in revenues in 2007.

41-45. No response is required for Paragraphs 41-45.

46. Respondent requests a hearing in St. Louis, Missouri, to contest material facts and the appropriateness of the proposed penalty.

Respectfully submitted,

JENKINS & KLING, P.C.

By: \_\_\_\_\_

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Attorneys for Respondent FRM Chem, Inc. and  
Advanced Products Technology, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and two (2) copies of the foregoing were served via Federal Express, upon:

Kathy Robinson  
Regional Hearing Clerk  
EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

two copies were served via Federal Express, upon:

United States Environmental Protection Agency  
Office of Administrative Law Judges  
Attn: Honorable Barbara A. Gunning  
1099 14<sup>th</sup> St., NW  
Washington, DC 20005

one copy was served via U.S. Mail, postage prepaid, upon:

Chris R. Dudding  
Assistant Regional Counsel  
EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

this 16<sup>th</sup> day of December, 2009.