

Kastendieck, the sales manager for Respondents, serves the interest of judicial economy, as the alternative is to file separate Complaints against each person.

Moreover, Respondents contend that “[t]here is no liability on any corporation or individual if they were not notified that they could not distribute and sell” a pesticide product. This contention is simply incorrect. FIFRA is a strict liability statute. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to sell to any person “any pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended.” Advance notification by EPA that sale or distribution of a product is not allowed under FIFRA is not a prerequisite to establishing a violation of Section 12(a)(1)(A) of FIFRA.

Furthermore, Complainant notes that two of the counts at issue¹ are for violations of Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), which states that it is unlawful for a person to distribute or sell a pesticide in violation of a Stop Sale Order issued pursuant to Section 13 of FIFRA, 7 U.S.C. § 136k. The same act (i.e., the sale or distribution of an unregistered pesticide) may constitute a violation of both 12(a)(1)(A) and 12(a)(2)(I) of FIFRA. EPA may bring an action for relief based on both counts, one which is for sale or distribution of an unregistered pesticide product (regardless of notice) and one which is for violation of an order that gives notice that the sale or distribution of a product is forbidden for any of several reasons, including the cancellation of that product’s registration.

¹ The two counts for violations of the Stop Sale Order are counts 57 and 58, alleged in the First Amended Complaint and Notice of Opportunity for Hearing filed on November 17, 2009 in the Matter of FRM Chem, Inc., Docket No. FIFRA-07-2008-0035.

3. Respondents' sole objection to Complainant's proposed amendment of the Complaint in the Matter of Advanced Products Technology, Inc., Docket No. FIFRA-07-2008-0036 is that the proposed amendment "lacks the necessary allegation that Respondents 'claimed the product was regulated.'" Respondents here misstate the applicable legal standard.

Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to sell to any person "any pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended." Respondent Advanced Products Technology, Inc.'s claims regarding the registration status of the product at issue are not an element of the violations alleged. What EPA must prove is (1) that the product is a pesticide, (2) that the product was sold or distributed by Respondent, and (3) that at the time of sale or distribution it was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

4. Respondents, who raised for the first time in their Prehearing Exchange the issue of ability to pay the penalties sought, seek to cast Complainant's Motion for Other Discovery Pursuant to 40 C.F.R. § 22.19(e) as "put[ting] the cart before the horse." Complainant respectfully disagrees.

As noted in Complainant's Memorandum in Support of its motion, Section 22.19(e) of the Consolidated Rules provides, *inter alia*, that the Presiding Officer may, upon motion of a party, order additional exchange of information following the prehearing information exchange provided for in Section 22.19(a) provided that such further discovery:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
- (ii) Seeks information that is most reasonably obtained from the non-moving party and which the non-moving party has refused to provide voluntarily;
- (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(emphasis added)

As previously stated in its Memorandum in Support of its motion, Complainant avers that the production of the financial and corporate information requested of Respondents and related entities and individuals will not unreasonably delay the proceeding or burden the non-movants because the Court has not yet set a hearing date. Furthermore, it is reasonable to assume that the information is in the possession of the Respondents and related individuals and entities listed in the motion because the information sought is the type kept in the ordinary course of business. Finally, the information requested, both from Respondents and from the various individuals and entities that have ties to Respondents, has significant probative value as to the disputed material fact of Respondents' ability to pay, as to the material facts of which entity or entities may be liable for the allegations in each of the several Complaints, and as to the disputed size of Respondents' business, insofar as the size of a violator's business is a factor to be considered when determining the appropriateness of the relief sought by Complainant, as required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

Further discovery regarding the financial status of Respondents, Respondents' shareholders, and the multiple other entities apparently operating from the same physical location as Respondents and which have documented financial ties to Respondents,² is warranted to determine the disputed issues of material fact relevant to liability and to the relief sought, not

² As noted in Complainant's Memorandum in Support of its motion, not only do Respondents' shareholders provide Respondents with loans for operating capital, but also, V.L. Clark Chemical Company, Inc., which shares its principal place of business with Respondents and which is run by Ann Kastendieck, Respondents' business manager, also provides Respondent Synisys, Inc., with a line of credit for expenditures. Furthermore, as documented by Complainant in its Memorandum and by attachments thereto, in 2004, Respondent FRM Chem, Inc. transferred the real property at 50-60 Highline Drive that serves as the principal place of business for the various corporations named in Complainant's Motion to KLARK Holdings, LLC, a Missouri limited liability company

simply to determine the issue of Respondents' ability to pay the proposed penalties, which, as noted above, was raised for the first time by Respondents in their consolidated Prehearing Exchange.

The confusing nature of which entity or entities is ultimately liable for the violations at issue is evident not only in the finger-pointing between the four named Respondents that led to the uncontested motion to amend the Complaints in the Matters of Synisys, Inc. and Custom Compounds, Inc., referenced in Paragraph 1 above, but also in the multiple conflicting stories related to EPA by representatives of the several Respondents. For example, in April 2008, a representative of Respondent Advanced Products Technology, Inc. informed EPA contractor Delbert Kelley that FRM Chem, Inc. had "closed its doors and walked away" at the end of 2006.³ This assertion was echoed by Keith Kastendieck, in his capacity as owner and plant manager, during the October 2008 inspection of Respondents' facility by EPA and the Missouri Department of Agriculture (MDA), when he informed the EPA and MDA inspectors that FRM Chem, Inc. had "ceased operation" in December of 2006, and that "we are not presently producing, labeling, selling or distributing" FRM Chlor 1250 or Steridine Disinfectant, the two canceled pesticides at issue, and also that "all inventory of FRM Chlor 1250 and Steridine had been sold before" December 31, 2006.⁴ These statements are directly contradicted by Respondent FRM Chem, Inc. in its Answer, in which it admits to multiple sales in 2007 and 2008 of both of the cancelled products, and by Respondent Advanced Products Technology, Inc., in which it admits to multiple sales of the product Steridine Disinfectant in 2007. The issue of

formed in December of 2003 by Ann Kastendieck.

³ Mr. Kelley's statement is in Attachment Y to Complainant's Rebuttal Prehearing Exchange and Motion to Amend Complaints and for Other Discovery Pursuant to 40 C.F.R. § 22.19(e).

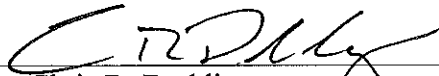
ultimate liability is *further* confused by the administrative dissolution of Respondent FRM Chem, Inc. by the Missouri Secretary of State on July 1, 2008, as well as by the 2008 and 2009 Federal income tax returns⁵ provided to Complainant by FRM Chem, Inc., in which FRM Chem, Inc. reported no gross receipts or sales and no gross income for the corporation for those reporting years.

For these reasons, which are explored in depth on pages 14-26 of its Memorandum in Support of its Motion, Complainant avers that the discovery of the financial and business information sought from Respondents, Respondents' individual stockholders, and the other entities named neither unreasonably delays the proceeding nor unreasonably burdens the non-moving parties, seeks information that most reasonably obtained from the entities and individuals named in the Motion, and seeks information that has significant probative value not only as to ascertaining Respondents' ability to pay the penalty proposed, but also as to resolving the disputed issues of material fact relevant to liability and to the amount of the civil penalty sought in these consolidated matters.

⁴ Keith Kastendieck's signed statements are included in Complainant's Prehearing Exchange as Exhibit 2c.

⁵ Respondent FRM Chem Inc.'s unsigned 2008 Federal Income Tax Return is included as Exhibit 30 to Respondent's Prehearing Exchange. The 2009 unsigned Return for FRM, which was provided to Complainant in February of 2010, was not included in Respondent's Prehearing Exchange, but is included in Attachment T to Complainant's Complainant's Rebuttal Prehearing Exchange and Motion to Amend Complaints and for Other Discovery Pursuant to 40 C.F.R. § 22.19(e). Respondents have informed Complainant that they have submitted 4506T forms to the IRS for official copies of the forms to be provided to Complainant, but on March 15, 2010, Complainant received notice from the IRS office in Ogden, Utah, that the IRS was unable to provide official copies of the forms for Respondents FRM Chem, Inc., Advanced Products Technology, Inc., or Synisys, Inc. to a third party. Complainant has informed Respondents' counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CR Dudding", written over a horizontal line.

Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101
(913) 551-7524

CERTIFICATE OF SERVICE

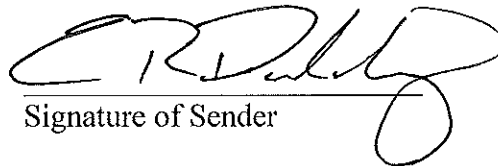
I hereby certify that on this 6th day of April, 2010, I hand-delivered the original and one copy of this document to the Regional Hearing Clerk, and sent one true and correct copy:

via Certified Mail, return receipt requested, 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 14th Street
Suite 350
Washington, D.C. 20005


Signature of Sender

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2008-0035
)
FRM Chem, Inc., Keith G. Kastendieck,) SECOND AMENDED COMPLAINT
and Karlan C. Kastendieck) AND NOTICE OF OPPORTUNITY
) FOR HEARING
)
)
Respondents)

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. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondents have 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 FRM Chem, Inc. (FRM Chem), a pesticide producer and distributor, located at 50-60 Highline Drive, Union, Missouri, and also Keith G. Kastendieck and Karlan C. Kastendieck, respectively, the Plant Manager and the Sales Manager for Respondent FRM Chem, Inc. 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(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).
6. 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.
7. 40 C.F.R. § 152.10 states that certain substances otherwise exempt from regulation as pesticides, including bleach and cleaning agents, are considered pesticides if a pesticidal claim is made on their labeling or in connection with their sale and distribution.
8. 40 C.F.R. § 152.15(a)(1) states that a product is considered to be for a pesticidal purpose and thus to be a pesticide requiring registration if the person who distributes or sells the product claims, states or implies, by labeling or otherwise, that it can or should be used to prevent, destroy, repel or mitigate a pest.
9. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines the term “antimicrobial pesticide” to mean a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or to protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.
10. 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.
11. 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.
12. 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.

13. 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).

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

15. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading.

16. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

17. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a) provides that where there is reason to believe that a pesticide is in violation of any of the provisions of FIFRA, or that such pesticide has been or is intended to be distributed or sold in violation of such provisions, or when the registration of the pesticide has been canceled or suspended, the Administrator may issue a written or printed “stop sale, use, or removal” order to any person who owns, controls, or has custody of such pesticide, and after receipt of such order no person shall sell, use, or remove the pesticide described in the order except in accordance with the provisions of the order.

18. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

Section IV

Factual Allegations

19. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to Intercon Chemical Company (the registrant) a pesticide known as STERI-DINE DISINFECTANT, EPA Registration Number (EPA Reg. No.) 48211-70. Thereafter, in accordance with 40 C.F.R. Section 152.132, the registrant entered into an agreement with Respondent FRM Chem, Inc. for Respondent FRM Chem, Inc. to supplementally distribute the registrant’s product under the name of STERI-DINE DISINFECTANT, using EPA Reg. No. 48211-70-10366. On July 19, 1995, the registration of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70, was cancelled as were all supplemental distribution agreements. Sales of existing stock by the registrant and supplemental distributors were prohibited after January 15, 1996.

20. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to 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 Respondent FRM Chem, Inc. for Respondent FRM Chem, Inc. 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.

21. On or about December 21, 2005, December 28, 2005, and October 8, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at Respondent FRM Chem's facility at 50 and 60 Hi-line Drive in Union, Missouri, to determine the status of Respondent FRM Chem's compliance with FIFRA.

22. During the inspections referenced in paragraph 21, the MDA representative documented that Respondent FRM Chem, Inc. was holding for sale or distribution STERI-DINE DISINFECTANT, the cancelled pesticide product referenced in paragraph 19, and FRM CHLOR 1250, the cancelled pesticide product referenced in paragraph 20.

23. On or about May 20, 2008, EPA issued Request For Information Letters regarding sales, distribution, and shipments of the cancelled pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-1036620 to the following customers of Respondent FRM Chem, Inc.: McFleeg, Inc., Watertown, South Dakota; Allen's Sales & Service, Ottawa, Kansas; Dairy Concepts, Lesueur, Minnesota; L W Chemicals, Mt. Olive, Illinois; Preston Dairy Supply, Monticello, Iowa; Tony Howell, Equity Group, East Gadsden, Alabama; and, Billy Palmer, Equity Group, East Gadsden, Alabama. In or about June and/or July of 2008 these customers of Respondent FRM Chem, Inc. documented multiple sales by the Respondents of the cancelled pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

24. At all times relevant to the counts in this Complaint, Karlan C. Kastendieck served as the sales manager for FRM Chem, Inc.

25. At all times relevant to the counts in this Complaint, Karlan C. Kastendieck's responsibilities as sales manager for FRM Chem, Inc. included sales management and writing labeling for products produced and distributed by FRM Chem, Inc., as well as responsibility for the daily operations for FRM Chem, Inc. at the facility located at 50 and 60 Hi-line Drive in Union, Missouri.

26. Keith G. Kastendieck was, at all times relevant to the counts in this Complaint, the corporate vice-president of Respondent FRM Chem, Inc. and part owner of the businesses located at 50 and 60 Hi-line Drive in Union, Missouri, including Respondent FRM Chem, Inc.,

and at all times referred to in this Complaint, served as the plant manager of Respondent FRM Chem, Inc.

27. 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 50 and 60 Hi-line Drive facility.

28. At all times referred to in this Complaint, Keith G. Kastendieck and Karlan C. Kastendieck were two of the four principal stockholders, corporate officers, and members of the board of directors for Respondent FRM Chem, Inc.

29. On October 8, 2008, Keith G. Kastendieck was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

30. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that no FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, had been produced or distributed by the Respondent FRM Chem, Inc., or by the other businesses located at 50 and 60 Hi-line Drive in Union, Missouri, since December of 2006.

31. On or about July 10, 2009, EPA issued Request For Information Letters regarding sales, distribution, and shipments of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to several customers of Respondent FRM Chem, Inc, including, McFleeg, Inc., of Watertown, South Dakota and Graber Equipment, of Oden, Indiana. Responses were received by EPA in July and/or August 2009, documenting multiple sales or distributions of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, all after December 31, 2006, and including at least two documented sales or distributions of the product that occurred after the October 8, 2008, service of the order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

Violations

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

Count 1

33. The facts stated in paragraphs 19 through 32 are realleged and incorporated as if fully stated herein.

34. On or about December 21, 2005, Respondent FRM Chem, Inc. held for sale or distribution a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

35. At the time Respondent FRM Chem, Inc. was documented as holding for sale or distribution STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

36. Respondents violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for sale or distribution a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

37. The STERI-DINE DISINFECTANT product label bore the false EPA Registration Number 48211-70-10366.

38. Respondents violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a misbranded pesticide.

39. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 33 through 38, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 2

40. The facts stated in paragraphs 19 through 39 are realleged and incorporated as if fully stated herein.

41. On or about December 21, 2005, Respondent FRM Chem, Inc. held for sale or distribution a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

42. At the time Respondent FRM Chem, Inc. was documented as holding for sale or distribution FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

43. Respondents violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for sale or distribution a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

44. The FRM CHLOR 1250 product label for the products documented bore the false EPA Registration Number 48211-20001-10366.

45. Respondents violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding

for sale or distribution a misbranded pesticide.

46. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 40 through 45, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 3-6 – Sales/Distributions to McFleeg, Inc.

Count 3

47. The facts stated in paragraphs 19 through 46 are realleged and incorporated as if fully stated herein.

48. On or about November 21, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

49. 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.

50. 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.

51. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 47 through 50, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 4

52. The facts stated in paragraphs 19 through 51 are realleged and incorporated as if fully stated herein.

53. On or about July 5, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

54. On the date of the sale and/or distribution referenced in paragraph 53, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

55. For the sale or distribution referenced in paragraph 53, 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.

56. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 52 through 55, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 5

57. The facts stated in paragraphs 19 through 56 are realleged and incorporated as if fully stated herein.

58. On or about April 1, 2007, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

59. On the date of the sale and/or distribution referenced in paragraph 58, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

60. For the sale or distribution referenced in paragraph 58, 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.

61. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 57 through 60, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 6

62. The facts stated in paragraphs 19 through 61 are realleged and incorporated as if fully stated herein.

63. On or about January 21, 2008, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

64. On the date of the sale and/or distribution referenced in paragraph 63, the product FRM

CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

65. For the sale or distribution referenced in paragraph 63, 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.

66. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 62 through 65, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 7 – Sale/Distribution to Allen’s Sales & Service

Count 7

67. The facts stated in paragraphs 19 through 66 are realleged and incorporated as if fully stated herein.

68. On or about May 18, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Allen’s Sales & Service, Ottawa, Kansas.

69. On the date of the sale and/or distribution referenced in paragraph 68, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

70. For the sale or distribution referenced in paragraph 68, 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.

71. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 67 through 70, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 8-11 – Sales/Distributions to Funk Sales & Service

Count 8

72. The facts stated in paragraphs 19 through 71 are realleged and incorporated as if fully stated herein.

73. On or about January 3, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

74. On the date of the sale and/or distribution referenced in paragraph 73, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

75. For the sale or distribution referenced in paragraph 73, 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.

76. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136i, and based on the facts stated in paragraphs 72 through 75, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 9

77. The facts stated in paragraphs 19 through 76 are realleged and incorporated as if fully stated herein.

78. On or about June 19, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

79. On the date of the sale and/or distribution referenced in paragraph 78, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

80. For the sale or distribution referenced in paragraph 78, 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.

81. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136i, and based on the facts stated in paragraphs 77 through 80, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 10

82. The facts stated in paragraphs 19 through 81 are realleged and incorporated as if fully stated herein.

83. On or about July 26, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

84. On the date of the sale and/or distribution referenced in paragraph 83, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

85. For the sale or distribution referenced in paragraph 83, 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.

86. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 82 through 85, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 11

87. The facts stated in paragraphs 19 through 86 are realleged and incorporated as if fully stated herein.

88. On or about December 12, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Funk Sales & Service, Ottawa, Kansas.

89. On the date of the sale and/or distribution referenced in paragraph 88, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

90. For the sale or distribution referenced in paragraph 88, 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.

91. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 87 through 90, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 12-16 – Sales/Distributions to Dairy Concepts

Count 12

92. The facts stated in paragraphs 19 through 91 are realleged and incorporated as if fully stated herein.

93. On or about January 9, 2006, Respondent FRM Chem, Inc. sold or distributed and shipped a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

94. On the date of the sale and/or distribution referenced in paragraph 93, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

95. For the sale or distribution referenced in paragraph 93, 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.

96. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 92 through 95, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 13

97. The facts stated in paragraphs 19 through 96 are realleged and incorporated as if fully stated herein.

98. On or about February 14, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

99. On the date of the sale and/or distribution referenced in paragraph 98, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

100. For the sale or distribution referenced in paragraph 98, 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.

101. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 97 through 100, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 14

102. The facts stated in paragraphs 19 through 101 are realleged and incorporated as if fully stated herein.

103. On or about July 10, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

104. On the date of the sale and/or distribution referenced in paragraph 103, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

105. For the sale or distribution referenced in paragraph 103, 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.

106. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 102 through 105, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 15

107. The facts stated in paragraphs 19 through 106 are realleged and incorporated as if fully stated herein.

108. On or about September 15, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

109. On the date of the sale and/or distribution referenced in paragraph 108, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

110. For the sale or distribution referenced in paragraph 108, 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.

111. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 107 through 110, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 16

112. The facts stated in paragraphs 19 through 111 are realleged and incorporated as if fully stated herein.

113. On or about December 13, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Dairy Concepts, Lesueur, Minnesota.

114. On the date of the sale and/or distribution referenced in paragraph 113, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

115. For the sale or distribution referenced in paragraph 113, 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.

116. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 112 through 115, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 17-25 - Sales/Distributions to L W Chemicals

Count 17

117. The facts stated in paragraphs 19 through 116 are realleged and incorporated as if fully stated herein.

118. On or about August 3, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

119. On the date of the sale and/or distribution referenced in paragraph 118, the product

STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

120. For the sale or distribution referenced in paragraph 118, 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.

121. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 117 through 120, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 18

122. The facts stated in paragraphs 19 through 121 are realleged and incorporated as if fully stated herein.

123. On or about October 4, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

124. On the date of the sale and/or distribution referenced in paragraph 123, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

125. For the sale or distribution referenced in paragraph 123, 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.

126. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 122 through 125, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 19

127. The facts stated in paragraphs 19 through 126 are realleged and incorporated as if fully stated herein.

128. On or about October 28, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W

Chemicals, Mt. Olive, Illinois.

129. On the date of the sale and/or distribution referenced in paragraph 128, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

130. For the sale or distribution referenced in paragraph 128, 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.

131. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 127 through 130, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 20

132. The facts stated in paragraphs 19 through 131 are realleged and incorporated as if fully stated herein.

133. On or about January 4, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

134. On the date of the sale and/or distribution referenced in paragraph 133, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

135. For the sale or distribution referenced in paragraph 133, 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.

136. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 132 through 135, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 21

137. The facts stated in paragraphs 19 through 136 are realleged and incorporated as if fully stated herein.

138. On or about October 4, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

139. On the date of the sale and/or distribution referenced in paragraph 138, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

140. For the sale or distribution referenced in paragraph 138, 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.

141. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 137 through 140, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 22

142. The facts stated in paragraphs 19 through 141 are realleged and incorporated as if fully stated herein.

143. On or about October 25, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

144. On the date of the sale and/or distribution referenced in paragraph 143, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

145. For the sale or distribution referenced in paragraph 143, 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.

146. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 142 through 145, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 23

147. The facts stated in paragraphs 19 through 146 are realleged and incorporated as if fully

stated herein.

148. On or about April 4, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

149. On the date of the sale and/or distribution referenced in paragraph 148, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

150. For the sale or distribution referenced in paragraph 148, 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.

151. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 147 through 150, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 24

152. The facts stated in paragraphs 19 through 151 are realleged and incorporated as if fully stated herein.

153. On or about October 3, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

154. On the date of the sale and/or distribution referenced in paragraph 153, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

155. For the sale or distribution referenced in paragraph 153, 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.

156. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 152 through 155, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 25

157. The facts stated in paragraphs 19 through 156 are realleged and incorporated as if fully stated herein.

158. On or about October 30, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals, Mt. Olive, Illinois.

159. On the date of the sale and/or distribution to L W Chemicals referenced in paragraph 158, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

160. For the sale or distribution referenced in paragraph 158, 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.

161. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 157 through 160, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 26-27

Sales/Distributions to Preston Dairy Supply

Count 26

162. The facts stated in paragraphs 19 through 161 are realleged and incorporated as if fully stated herein.

163. On or about March 30, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Preston Dairy Supply, Monticello, Iowa.

164. On the date of the sale and/or distribution referenced in paragraph 163, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

165. For the sale or distribution referenced in paragraph 163, 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.

166. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 162 through 165, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 27

167. The facts stated in paragraphs 19 through 166 are realleged and incorporated as if fully stated herein.

168. On or about July 5, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Preston Dairy Supply, Monticello, Iowa.

169. On the date of the sale and/or distribution referenced in paragraph 168, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

170. For the sale or distribution referenced in paragraph 168, 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.

171. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 167 through 170, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 28-31 - Sales/Distributions to Tony Howell, Equity Group

Count 28

172. The facts stated in paragraphs 19 through 171 are realleged and incorporated as if fully stated herein.

173. On or about July 7, 2004, Respondent FRM Chem, Inc. sold or distributed and shipped a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell, Equity Group, East Gadsden, Alabama.

174. On the date of the sale and/or distribution referenced in paragraph 173, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

175. For the sale or distribution referenced in paragraph 173, 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.

176. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 172 through 175, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 29

177. The facts stated in paragraphs 19 through 176 are realleged and incorporated as if fully stated herein.

178. On or about August 4, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell, Equity Group, East Gadsden, Alabama.

179. On the date of the sale and/or distribution referenced in paragraph 178, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

180. For the sale or distribution referenced in paragraph 178, 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.

181. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 177 through 180 it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 30

182. The facts stated in paragraphs 19 through 181 are realleged and incorporated as if fully stated herein.

183. On or about October 4, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell, Equity Group, East Gadsden, Alabama.

184. On the date of the sale and/or distribution to referenced in paragraph 183, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

185. For the sale or distribution referenced in paragraph 183, 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.

186. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 182 through 185, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 31

187. The facts stated in paragraphs 19 through 186 are realleged and incorporated as if fully stated herein.

188. On or about November 1, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Tony Howell, Equity Group, East Gadsden, Alabama.

189. On the date of the sale and/or distribution referenced in paragraph 188, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

190. For the sale or distribution referenced in paragraph 188, 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.

191. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 187 through 190, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 32 – Sale/Distribution to Charles Rademacher

192. The facts stated in paragraphs 19 through 191 are realleged and incorporated as if fully stated herein.

193. On or about January 11, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Charles Rademacher, Owensville, Missouri.

194. On the date of the sale and/or distribution referenced in paragraph 193, the product FRM

CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

195. For the sale or distribution referenced in paragraph 193, 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.

196. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 192 through 195, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 33-41 – Sales/Distributions to Riegel Farms

Count 33

197. The facts stated in paragraphs 19 through 196 are realleged and incorporated as if fully stated herein.

198. On or about February 13, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

199. On the date of the sale and/or distribution referenced in paragraph 198, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

200. For the sale or distribution referenced in paragraph 198, 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.

201. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 197 through 200, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 34

202. The facts stated in paragraphs 19 through 201 are realleged and incorporated as if fully stated herein.

203. On or about March 10, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity

of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

204. On the date of the sale and/or distribution referenced in paragraph 203, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

205. For the sale or distribution referenced in paragraph 203, 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.

206. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 202 through 205, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 35

207. The facts stated in paragraphs 19 through 206 are realleged and incorporated as if fully stated herein.

208. On or about April 4, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

209. On the date of the sale and/or distribution referenced in paragraph 208, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

210. For the sale or distribution referenced in paragraph 208, 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.

211. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 207 through 210, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 36

212. The facts stated in paragraphs 19 through 211 are realleged and incorporated as if fully stated herein.

213. On or about June 2, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

214. On the date of the sale and/or distribution referenced in paragraph 213, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

215. For the sale or distribution referenced in paragraph 213, 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.

216. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 212 through 215, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 37

217. The facts stated in paragraphs 19 through 216 are realleged and incorporated as if fully stated herein.

218. On or about June 23, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

219. On the date of the sale and/or distribution referenced in paragraph 218, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

220. For the sale or distribution referenced in paragraph 218, 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.

221. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 217 through 220, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 38

222. The facts stated in paragraphs 19 through 221 are realleged and incorporated as if fully stated herein.

223. On or about July 31, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

224. On the date of the sale and/or distribution referenced in paragraph 223, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

225. For the sale or distribution referenced in paragraph 223, 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.

226. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 222 through 225, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 39

227. The facts stated in paragraphs 19 through 226 are realleged and incorporated as if fully stated herein.

228. On or about September 14, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

229. On the date of the sale and/or distribution referenced in paragraph 228, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

230. For the sale or distribution referenced in paragraph 228, 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.

231. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 227 through 230, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 40

232. The facts stated in paragraphs 19 through 232 are realleged and incorporated as if fully stated herein.

233. On or about October 9, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

234. On the date of the sale and/or distribution referenced in paragraph 233, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

235. For the sale or distribution referenced in paragraph 233, 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.

236. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 232 through 235, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 41

237. The facts stated in paragraphs 19 through 236 are realleged and incorporated as if fully stated herein.

238. On or about November 22, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Riegel Farms, South Solon, Ohio.

239. On the date of the sale and/or distribution referenced in paragraph 238, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

240. For the sale or distribution referenced in paragraph 238, 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.

241. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 237 through 240, it is proposed that a civil penalty of \$6,500 be assessed against

Respondents.

Counts 42-52 – Sales/Distributions to Billy Palmer, Equity Group

Count 42

242. The facts stated in paragraphs 19 through 241 are realleged and incorporated as if fully stated herein.

243. On or about July 31, 2004, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

244. On the date of the sale and/or distribution referenced in paragraph 243, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

245. For the sale or distribution referenced in paragraph 243, 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.

246. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 242 through 245, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 43

247. The facts stated in paragraphs 19 through 246 are realleged and incorporated as if fully stated herein.

248. On or about January 4, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

249. On the date of the sale and/or distribution referenced in paragraph 248, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

250. For the sale or distribution referenced in paragraph 248, 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.

251. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 247 through 250, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 44

252. The facts stated in paragraphs 19 through 251 are realleged and incorporated as if fully stated herein.

253. On or about August 3, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

254. On the date of the sale and/or distribution referenced in paragraph 253, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

255. For the sale or distribution referenced in paragraph 253, 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.

256. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 252 through 255, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 45

257. The facts stated in paragraphs 19 through 256 are realleged and incorporated as if fully stated herein.

258. On or about October 6, 2005, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

259. On the date of the sale and/or distribution referenced in paragraph 258, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

260. For the sale or distribution referenced in paragraph 258, 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.

261. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 257 through 260, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 46

262. The facts stated in paragraphs 19 through 261 are realleged and incorporated as if fully stated herein.

263. On or about April 5, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

264. On the date of the sale and/or distribution referenced in paragraph 263, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

265. For the sale or distribution referenced in paragraph 263, 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.

266. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 262 through 265, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 47

267. The facts stated in paragraphs 19 through 266 are realleged and incorporated as if fully stated herein.

268. On or about October 5, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

269. On the date of the sale and/or distribution referenced in paragraph 268, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

270. For the sale or distribution referenced in paragraph 268, 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.

271. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 267 through 270, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 48

272. The facts stated in paragraphs 19 through 271 are realleged and incorporated as if fully stated herein.

273. On or about November 2, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

274. On the date of the sale and/or distribution referenced in paragraph 273, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

275. For the sale or distribution referenced in paragraph 273, 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.

276. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 272 through 275, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 49

277. The facts stated in paragraphs 19 through 276 are realleged and incorporated as if fully stated herein.

278. On or about September 4, 2007, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

279. On the date of the sale and/or distribution referenced in paragraph 278, the product

STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

280. For the sale or distribution referenced in paragraph 278, 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.

281. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 277 through 280, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 50

282. The facts stated in paragraphs 19 through 281 are realleged and incorporated as if fully stated herein.

283. On or about October 3, 2007, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

284. On the date of the sale and/or distribution referenced in paragraph 283, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

285. For the sale or distribution referenced in paragraph 283, 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.

286. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 282 through 285, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 51

287. The facts stated in paragraphs 19 through 286 are realleged and incorporated as if fully stated herein.

288. On or about December 20, 2007, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

289. On the date of the sale and/or distribution referenced in paragraph 288, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

290. For the sale or distribution referenced in paragraph 288, 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.

291. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 287 through 290, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 52

292. The facts stated in paragraphs 19 through 291 are realleged and incorporated as if fully stated herein.

293. In January 2008, Respondent FRM Chem, Inc. sold or distributed a quantity of the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to Billy Palmer, Equity Group, East Gadsden, Alabama.

294. On the date of the sale and/or distribution referenced in paragraph 293, the product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

295. For the sale or distribution referenced in paragraph 293, 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.

296. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 292 through 295, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 53-56 – Sales/Distributions to Weir Farm Supply

Count 53

297. The facts stated in paragraphs 19 through 296 are realleged and incorporated as if fully stated herein.

298. On or about February 22, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

299. On the date of the sale and/or distribution referenced in paragraph 298, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

300. For the sale or distribution referenced in paragraph 298, 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.

301. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 297 through 300, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 54

302. The facts stated in paragraphs 19 through 301 are realleged and incorporated as if fully stated herein.

303. On or about April 25, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

304. On the date of the sale and/or distribution referenced in paragraph 303, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

305. For the sale or distribution referenced in paragraph 303, 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.

306. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 302 through 305, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 55

307. The facts stated in paragraphs 19 through 306 are realleged and incorporated as if fully stated herein.

308. On or about September 22, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

309. On the date of the sale and/or distribution referenced in paragraph 308, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

310. For the sale or distribution referenced in paragraph 308, 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.

311. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 307 through 310, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 56

312. The facts stated in paragraphs 19 through 311 are realleged and incorporated as if fully stated herein.

313. On or about December 11, 2006, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Weir Farm Supply, La Veta, Colorado.

314. On the date of the sale and/or distribution referenced in paragraph 313, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

315. For the sale or distribution referenced in paragraph 313, 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.

316. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 312 through 315, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 57-58 – Violations of a Stop Sale, Use, or Removal Order

Count 57

317. The facts stated in paragraphs 19 through 316 are realleged and incorporated as if fully stated herein.

318. On October 8, 2008, Respondent FRM Chem, Inc. was served by an EPA Inspector with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

319. On or about October 13, 2008, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment, Odon, Indiana.

320. For the sale or distribution referenced in paragraph 319, Respondents violated Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), by selling or distributing a pesticide in violation of an order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

321. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 317 through 320, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 58

322. The facts stated in paragraphs 19 through 321 are realleged and incorporated as if fully stated herein.

323. On October 8, 2008, Respondent FRM Chem, Inc. was served by an EPA Inspector with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

324. On or about November 26, 2008, Respondent FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment, Odon, Indiana.

325. For the sale or distribution referenced in paragraph 324, Respondents violated Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), by selling or distributing a pesticide in violation of an order issued under Section 13 of FIFRA, 7 U.S.C. § 136k.

326. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 322 through 325, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Section V

Total Proposed Penalty

327. 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 between January 30, 1997, and March 15, 2004, the maximum statutory penalty per violation is Five Thousand Five Hundred Dollars (\$5,500). 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 Three Hundred and Seventy-Seven Thousand Dollars (\$377,000) against Respondents for the above-described violations.

Appropriateness of Proposed Penalty

328. 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 FRM Chem, the effect of the proposed penalty on Respondent FRM Chem'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)).

329. For purposes of calculating the proposed penalty, Respondents 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 Respondent FRM Chem's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

330. 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.

331. 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.

332. 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.

333. Payment of the total penalty - \$377,000 - 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.

334. 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

335. 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.

336. 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).

337. 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.

338. 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

339. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondents' request. Respondents 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' business, 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.

340. 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.

341. 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.

Date

William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2008-0036
)
Advanced Products Technology, Inc.,) FIRST AMENDED COMPLAINT
Keith G. Kastendieck, and Karlan C.) AND NOTICE OF OPPORTUNITY
Kastendieck) FOR HEARING
)
Respondents)
)

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. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondents have 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 Advanced Products Technology, Inc., a pesticide producer and distributor, located at 50 and 60 Highline Drive in Union, Missouri, and also Keith G. Kastendieck and Karlan C. Kastendieck, who are and were respectively, the Plant Manager and the Sales Manager for Respondent Advanced Products Technology, Inc., as well as officers,

directors and shareholders of the corporation. 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). Respondent Advanced Products Technology, Inc. is a Missouri corporation qualified to do business in the state of Missouri.

Section III

Statutory & Regulatory Background

5. 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).
6. 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.
7. 40 C.F.R. § 152.10 states that certain substances otherwise exempt from regulation as pesticides, including bleach and cleaning agents, are considered pesticides if a pesticidal claim is made on their labeling or in connection with their sale and distribution.
8. 40 C.F.R. § 152.15(a)(1) states that a product is considered to be for a pesticidal purpose and thus to be a pesticide requiring registration if the person who distributes or sells the product claims, states or implies, by labeling or otherwise, that it can or should be used to prevent, destroy, repel or mitigate a pest.
9. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines the term "antimicrobial pesticide" to mean a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or to protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.
10. 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.
11. 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.

12. 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, repack, label, relabel, or otherwise change the container of any pesticide or device.

13. 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

14. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA granted a registration to Intercon Chemical Company (the registrant) for a pesticide known as STERI-DINE DISINFECTANT, EPA Registration Number (EPA Reg. No.) 48211-70. In accordance with 40 C.F.R. Section 152.132, the registrant subsequently entered into one or more agreements to supplementally distribute the registrant's product. One such agreement was made with a Missouri corporation, FRM Chem, Inc. (FRM Chem), to distribute the product STERI-DINE DISINFECTANT, using EPA Reg. No. 48211-70-10366.

15. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to 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 to distribute the registrant's product under the name of FRM CHLOR 1250, using EPA Reg. No. 48211-20001-10366.

16. On July 19, 1995, the registrations of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70, and of CHLOR 1250, EPA Reg. No. 48211-20001, were cancelled, as were all supplemental distribution agreements pertaining thereto. Sales of existing stock by the registrant and supplemental distributors of the two products were prohibited after January 15, 1996.

17. At all times relevant to the violations alleged in this Complaint, both FRM Chem and Respondent Advanced Products Technology, Inc., share or shared the facility at 50 and 60 Hi-line Drive in Union, Missouri.

18. Respondents 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).

19. Respondent Advanced Products Technology, Inc., was, at all times referred to in this Complaint, a Missouri corporation qualified to business in the state of Missouri.

20. Keith G. Kastendieck and Karlan C. Kastendieck are two of the four principal stockholders, corporate officers, and members of the board of directors for both FRM Chem and Advanced Products Technology, Inc.
21. 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.
22. 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 FRM Chem and Advanced Products Technology, Inc. facility at 50 and 60 Hi-line Drive in Union, Missouri.
23. 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 Respondent Advanced Products Technology, Inc.
24. 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 Respondent Advanced Products Technology, Inc.
25. On or about December 21, 2005 and December 28, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at the facility at 50 and 60 Hi-line Drive in Union, Missouri, shared by multiple businesses run by the Kastendieck family, including Advanced Products Technology, Inc., and FRM Chem, to determine the status of FRM Chem's compliance with FIFRA.
26. During the inspections referenced in paragraph 25, the MDA representative documented that FRM Chem was holding for sale or distribution STERI-DINE DISINFECTANT, the cancelled pesticide product referenced in paragraph 14.
27. On or about May 20, 2008, EPA requested information from L W Chemicals, Inc. of Mt. Olive, Illinois, regarding purchases of the pesticide referenced in paragraph 14 from FRM Chem and any other distributors. On or about May 27, 2008, L W Chemicals, Inc. responded to EPA's request for information and documented multiple sales or distributions by Respondent Advanced Products Technology, of the pesticide STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, referenced in paragraph 14.
28. During the inspections referenced in paragraph 25, the MDA representative documented that FRM Chem was holding for sale or distribution a 12.5% sodium hypochlorite solution labeled as FRM CHLOR 1250, the cancelled pesticide product referenced in paragraph 15.

29. On or about October 8, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at the facility at 50 and 60 Hi-line Drive in Union, Missouri, to determine the status of Respondents' compliance with FIFRA. On that date, Keith G. Kastendieck was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366.
30. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that neither FRM Chem nor the other corporations run by the Kastendieck family at 50 and 60 Hi-line Drive in Union, Missouri, had produced, sold, or distributed either of the two pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, since December 2006.
31. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that FRM Chem had ceased operation effective December 31, 2006.
32. On or about July 10, 2009, EPA requested information from the Franklin County Humane Society, of Union, Missouri, regarding sales or distributions by Respondent Advanced Products Technology, Inc. of a 12.5% sodium hypochlorite solution sanitizer.
33. On or about July 24, 2009, the Franklin County Humane Society responded to EPA's request for information and documented multiple sales or distributions by Respondents of a product intended for use as a sanitizer, labeled SODIUM HYPOCHLORITE SOLUTION, produced by Respondent Advanced Products Technology, Inc.
34. The label of the product SODIUM HYPOCHLORITE SOLUTION distributed by Respondents to the Franklin County Humane Society identifies Respondent Advanced Products Technology, Inc. as its producer.
35. On FRM Chem invoices, item numbers starting with the prefix "1004-" refer to a 12.5% sodium hypochlorite product, FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.
36. On Respondent Advanced Products Technology, Inc. packing slips, item numbers starting with the prefix "1004-" refer to a 12.5% sodium hypochlorite product.
37. The chemical sodium hypochlorite is commonly used in aqueous solution as a sanitizer and disinfectant.
38. On one or more occasions, a member of the Kastendieck family, representing Respondent Advanced Products Technology, Inc. and/or FRM Chem, provided instruction to officers or employees of the Franklin County Humane Society on using a 12.5% sodium hypochlorite solution product as an antimicrobial disinfectant.

39. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION states the product formulation as "Active Ingredient: Sodium Hypochlorite ... 12.5%" and "Inert Ingredients ... 87.5%."
40. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, states the product formulation as "Active Ingredient: Sodium Hypochlorite ... 12.5%" and "Inert Ingredients ... 87.5%."
41. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION under the heading "Rinse Method" for non-porous food contact surfaces directs that, following cleaning of non-porous food contact equipment "in the normal manner," a solution of 100 parts per million available chlorine be used on the equipment prior to use, maintaining contact for at least two minutes.
42. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, under the heading "Rinse Method" for non-porous food contact surfaces directs that, following cleaning of non-porous food contact equipment "in the normal manner," a solution of 100 parts per million available chlorine be used on the equipment prior to use, maintaining contact for at least two minutes.
43. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION under the heading "Clean-in-Place Method" for non-porous food contact surfaces directs that equipment be thoroughly cleaned, and then that a solution of 200 parts per million available chlorine be used to completely fill the interior of food contact equipment, ensuring contact with all internal surfaces for at least 10 minutes.
44. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, under the heading "Clean-in-Place Method" for non-porous food contact surfaces directs that equipment be thoroughly cleaned, and then that a solution of 200 parts per million available chlorine be used to completely fill the interior of food contact equipment, ensuring contact with all internal surfaces for at least 10 minutes.
45. The label of the Advanced Products Technology, Inc. product SODIUM HYPOCHLORITE SOLUTION under the heading "Farm Premises" directs that surfaces be thoroughly cleaned with soap or detergent and water, then that the surfaces be saturated for a period of 10 minutes with a solution of at least 1000 parts per million available chlorine.
46. The label of the FRM Chem product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, under the heading "Farm Premises" directs that surfaces be thoroughly cleaned with soap or detergent and water, then that the surfaces be saturated for a period of 10 minutes with a solution of at least 1000 parts per million available chlorine.

Violations

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

Count 1

48. The facts stated in paragraphs 14 through 47 are realleged and incorporated as if fully stated herein.

49. On or about August 27, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

50. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

51. 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.

52. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 48 through 51, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 2

53. The facts stated in paragraphs 14 through 52 are realleged and incorporated as if fully stated herein.

54. On or about September 28, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

55. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

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.

57. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 53 through 56, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 3

58. The facts stated in paragraphs 14 through 57 are realleged and incorporated as if fully stated herein.

59. On or about October 3, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

60. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

61. 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 58 through 61, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 4

63. The facts stated in paragraphs 14 through 62 are realleged and incorporated as if fully stated herein.

64. On or about December 19, 2007, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemicals in Mt. Olive, Illinois.

65. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

66. 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.

67. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in

paragraphs 63 through 66, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 5

68. The facts stated in paragraphs 14 through 67 are realleged and incorporated as if fully stated herein.

69. On or about January 27, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

70. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

71. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

72. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

73. For the sale or distribution to the Franklin County Humane Society, 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.

74. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 68 through 73, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 6

75. The facts stated in paragraphs 14 through 74 are realleged and incorporated as if fully stated herein.

76. On or about February 3, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

77. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE

SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

78. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

79. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

80. For the sale or distribution to the Franklin County Humane Society, 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.

81. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 75 through 80, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 7

82. The facts stated in paragraphs 14 through 81 are realleged and incorporated as if fully stated herein.

83. On or about March 25, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

84. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

85. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

86. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

87. For the sale or distribution to the Franklin County Humane Society, 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.

88. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 82 through 87, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 8

89. The facts stated in paragraphs 14 through 88 are realleged and incorporated as if fully stated herein.

90. On or about May 27, 2009, Respondent Advanced Products Technology, Inc. sold or distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

91. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

92. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

93. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

94. For the sale or distribution to the Franklin County Humane Society, 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.

95. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 89 through 94, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Count 9

96. The facts stated in paragraphs 14 through 95 are realleged and incorporated as if fully stated herein.

97. On or about July 14, 2009, Respondent Advanced Products Technology, Inc. sold or

distributed a quantity of the product SODIUM HYPOCHLORITE SOLUTION to the Franklin County Humane Society, in Union, Missouri.

98. In conjunction with the sale or distribution of the product SODIUM HYPOCHLORITE SOLUTION, Respondents claimed, stated, or implied, by labeling or otherwise, that the product can or should be used as an antimicrobial pesticide.

99. Since the product SODIUM HYPOCHLORITE SOLUTION contains pesticidal claims in its labeling or pesticidal claims were made in connection with its sale or distribution, it is subject to registration as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

100. On the date of the sale and/or distribution to the Franklin County Humane Society, the product SODIUM HYPOCHLORITE SOLUTION was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

101. For the sale or distribution to the Franklin County Humane Society, 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.

102. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 96 through 101, it is proposed that a civil penalty of \$7,500 be assessed against Respondents.

Section V

Total Proposed Penalty

103. 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, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). For any such violation occurring on or after January 12, 2009, the maximum statutory penalty per violation is Seven Thousand Five Hundred Dollars (\$7,500). EPA proposes to assess a total civil penalty of \$63,500 against Respondents for the above-described violations.

Appropriateness of Proposed Penalty

104. 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 Advanced Products Technology, Inc., the effect of the proposed penalty on Respondent Advanced Products Technology, Inc.'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)).

105. For purposes of calculating the proposed penalty, Respondent Advanced Products Technology, Inc. was 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 Respondent Advanced Products Technology Inc.'s gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

106. 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 Respondent Advanced Products Technology, Inc. to continue in business.

107. 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.

108. 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.

109. Payment of the total penalty - \$63,500 - 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, MO 63197-9000

110. 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 VII
901 North 5th Street

Kansas City, Kansas 66101

and a copy to:

Chris R. Dudding
Assistant Regional Counsel
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section VI

Answer and Request for Hearing

111. 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 the EPA Region 7 Regional Hearing Clerk, at:

Regional Hearing Clerk
EPA - Region VII
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.

112. 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.

113. 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.

114. 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

115. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondents' request. Respondents 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 Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's 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 VII
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7524

116. 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.

117. 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.

Date

William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2009-0041
)
Synisys, Inc., FRM Chem, Inc.,) FIRST AMENDED COMPLAINT
Keith G. Kastendieck, and Karlan C.) AND NOTICE OF OPPORTUNITY
Kastendieck) FOR HEARING
)
)
Respondent)

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 Respondents have 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 Synisys, Inc., and FRM Chem, Inc., both of which are pesticide producers and distributors and companies incorporated under the laws of the State of Missouri, both 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 FRM Chem, 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) for FRM 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. Both FRM and Respondent Synisys, Inc. share the same physical facility at 50 and 60 Hi-line Drive in Union, Missouri.

14. Keith G. Kastendieck and Karlan C. Kastendieck are two of the four principal stockholders, corporate officers, and members of the board of directors for Respondents FRM Chem, Inc. and Synisys, Inc.

15. 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.

16. Karlan C. Kastendieck's responsibilities as sales manager for the businesses operating at 50 and 60 Hi-line Drive in Union, Missouri included sales management and writing labeling for products, as well as responsibility for the daily operations at the facility shared by Respondents FRM Chem, Inc. and Synisys, Inc.

17. 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 Respondents Synisys, Inc. and FRM Chem, Inc.

18. 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 Respondents Synisys, Inc. and FRM Chem, Inc.

19. On or about July 1, 2008, FRM Chem, Inc. was administratively dissolved as a corporation by the Missouri Secretary of State for failure to file a correct and current annual report.

20. On or about October 8, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at Respondents' facility in Union, Missouri, to determine the status of Respondents' compliance with FIFRA.

21. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that FRM Chem, Inc. had ceased operation effective December 31, 2006.

22. On October 8, 2008, Keith G. Kastendieck informed inspectors for the MDA and EPA that no FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, had been produced or distributed by

the two corporate Respondents or by the other businesses located at 50 and 60 Highline Drive in Union, Missouri, since December of 2006.

23. On October 8, 2008, Keith G. Kastendieck was served with an order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366.

24. On or about July 10, 2009, EPA issued Request For Information Letters regarding sales, distribution, and shipments of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to several customers of Respondents, including, McFleeg, Inc., in Watertown, South Dakota, and Graber Equipment, in Oden, Indiana. Responses were received by EPA in July and/or August 2009, documenting multiple sales or distributions of FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, all after December 31, 2006, including at least two documented sales or distributions of the product that occurred after the October 8, 2008, service of the order issued pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), prohibiting the distribution, sale, use, or removal of the pesticides FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 and STERIDINE DISINFECTANT, EPA Reg. No. 48211-70-10366.

Violations

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

Counts 1-3 – Sales/Distributions to McFleeg, Inc.

Count 1

26. The facts stated in paragraphs 12 through 25 are realleged and incorporated as if fully stated herein.

27. On or about January 8, 2007, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., in Watertown, South Dakota.

28. On the date of the sale and/or distribution referenced in paragraph 27, 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. The sale and/or distribution referenced in paragraph 27 is documented by Invoice No. 35522.

30. Invoice No. 35522 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.

31. For the sale or distribution referenced in paragraph 27, 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.

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 26 through 31, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 2

33. The facts stated in paragraphs 12 through 32 are realleged and incorporated as if fully stated herein.

34. On or about March 28, 2007, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., in Watertown, South Dakota.

35. The sale and/or distribution referenced in paragraph 34 is documented by Invoice No. 35567.

36. Invoice No. 35567 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.

37. On the date of the sale and/or distribution referenced in paragraph 34, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

38. For the sale or distribution referenced in paragraph 34, 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.

39. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 33 through 38, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 3

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

41. On or about January 21, 2008, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to McFleeg, Inc., Watertown, South Dakota.

42. The sale and/or distribution referenced in paragraph 41 is documented by Invoice No. 35684.
43. Invoice No. 35684 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.
44. On the date of the sale and/or distribution referenced in paragraph 41, 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 41, 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. § 136i, and based on the facts stated in paragraphs 40 through 45, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Counts 4-7 – Sales/Distributions to Graber Equipment

Count 4

47. The facts stated in paragraphs 12 through 46 are realleged and incorporated as if fully stated herein.
48. On or about February 6, 2007, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment in Oden, Indiana.
49. 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.
50. The sale and/or distribution referenced in paragraph 48 is documented by Invoice No. 35539.
51. Invoice No. 35539 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.
52. 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.

53. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 47 through 52, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 5

54. The facts stated in paragraphs 12 through 53 are realleged and incorporated as if fully stated herein.

55. On or about February 13, 2008, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment in Oden, Indiana.

56. On the date of the sale and/or distribution referenced in paragraph 55, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

57. The sale and/or distribution referenced in paragraph 55 is documented by Invoice No. 35690.

58. Invoice No. 35690 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.

59. For the sale or distribution referenced in paragraph 55, 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.

60. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 54 through 59, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 6

61. The facts stated in paragraphs 12 through 60 are realleged and incorporated as if fully stated herein.

62. On or about October 13, 2008, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment in Oden, Indiana.

63. On the date of the sale and/or distribution referenced in paragraph 62, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

64. The sale and/or distribution referenced in paragraph 62 is documented by Invoice No. 35762.

65. Invoice No. 35762 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.

66. For the sale or distribution referenced in paragraph 62, 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.

67. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 61 through 66, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Count 7

68. The facts stated in paragraphs 12 through 67 are realleged and incorporated as if fully stated herein.

69. On or about November 26, 2008, Respondents Synisys, Inc. and FRM Chem, Inc. sold or distributed a quantity of the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366, to Graber Equipment, Oden, Indiana.

70. On the date of the sale and/or distribution referenced in paragraph 69, the product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

71. The sale and/or distribution referenced in paragraph 69 is documented by Invoice No. 35782.

72. Invoice No. 35782 is on FRM Chem, Inc. letterhead, and contains the instruction "PLEASE MAKE CHECK PAYABLE TO SYNISYS INC." at the bottom of the document.

73. For the sale or distribution referenced in paragraph 69, 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.

74. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 68 through 73, it is proposed that a civil penalty of \$6,500 be assessed against Respondents.

Section V

Total Proposed Penalty

75. 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 Forty-Five Thousand Five Hundred Dollars (\$45,500) against Respondents for the above-described violations.

Appropriateness of Proposed Penalty

76. 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 Respondents, the effect of the proposed penalty on Respondents' 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)).

77. For purposes of calculating the proposed penalty, Respondents 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.

78. 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.

79. 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.

80. 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.

81. Payment of the total penalty - \$45,500 - 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

82. 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 VII
901 North 5th Street
Kansas City, Kansas 66101

and a copy to:

Chris R. Dudding
Assistant Regional Counsel
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section VI

Answer and Request for Hearing

83. 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 VII
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.

84. 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).

85. 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.

86. 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

87. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondents' request. Respondents 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 VII
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7524

88. 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.

89. 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.

Date

William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date

Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2009-0042
)
Custom Compounders, Inc.,) FIRST AMENDED COMPLAINT
Advanced Products Technology, Inc.,) AND NOTICE OF OPPORTUNITY
Keith G. Kastendieck, and Karlan C.) FOR HEARING
Kastendieck)
)
Respondents)

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. § 136l.
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, repack, 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 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.

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 Compounders, 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.

Date

William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel