

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
) FIFRA-07-2008-0035
FRM Chem, Inc.,)
Keith G. Kastendieck and) ANSWER TO
Karlán C. Kastendieck,) SECOND AMENDED COMPLAINT
)
Respondents.)

**CORPORATE RESPONDENT FRM CHEM, INC.'S ANSWER
TO SECOND AMENDED COMPLAINT**

COMES NOW Corporate Respondent FRM Chem, Inc. ("FRM"), by and through its undersigned counsel, and for its Answer to the Second Amended Complaint filed by United States Environmental Protection Agency ("EPA"), states the following:

Section I

Jurisdiction

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

Section II

Parties

3. FRM admits the allegations contained in Paragraph 3.
4. FRM admits that FRM is a pesticide producer and distributor located at 50-60 Hi-Line Drive, Union, Missouri. FRM admits it was a "person" as defined by Section 2(s) of FIFRA. FRM denies the balance of the allegations in Paragraph 4.

Section III

Statutory & Regulatory Background

5-18. Subsections of Title 7, U.S.C. § 136, subsections of 40 C.F.R. § 152 and subsections of 40 C.F.R. § 167 quoted in Paragraphs 5 through 18 speak for themselves.

Section IV

Factual Allegations

19. FRM admits the first two (2) full sentences of Paragraph 19.

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

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

FRM admits it became aware of these cancellations and prohibitions when a Stop Sale Order was served on Respondent on or about October 8, 2008.

20. FRM admits the first two (2) full sentences of Paragraph 20. FRM denies the remaining allegations contained in Paragraph 20 for the reasons stated in the previous paragraph.

21. FRM admits that a Missouri Department of Agriculture (“MDA”) representative conducted a PEI at Respondent’s facility on December 21 and December 28, 2005. At that time, the MDA representative found in his inspection “No violations suspected”. FRM admits an MDA representative inspected Respondent’s facility on October 8, 2008 and issued Stop Sale Orders as a result of this inspection. This is the first date FRM was ever told of any FIFRA compliance problems.

22. FRM denies the allegation contained in Paragraph 22 as it pertains to the December 21 and 28, 2005 inspections. FRM admits the allegation contained in Paragraph 22 as it pertains to the October 8, 2008 inspection.

23. FRM admits the entirety of Paragraph 23 other than the allegation that Respondent knew it was selling cancelled pesticides.

24. FRM denies the allegations contained in Paragraph 24.

25. FRM denies the allegations contained in Paragraph 25.

26. FRM denies the allegations contained in Paragraph 26.

27. FRM denies the allegations contained in Paragraph 27.

28. FRM denies the allegations contained in Paragraph 28.

29. On October 8, 2008, Keith G. Kastendieck was served with two "Stop, Sale, Use, or Removal Orders" on behalf of FRM Chem, Inc. and Advanced Products Technology, Inc.

No representative of FRM Chem, Inc. or Advanced Products Technology, Inc. had ever been served with any similar "Stop Sale Order" for FRM CHLOR 1250 prior to October 8, 2008.

30. FRM denies the allegations contained in Paragraph 30.

31. FRM denies the allegations contained in Paragraph 31.

Violations

32. FRM denies the allegations contained in Paragraph 32.

Count 1

33. As and for its Answer to Paragraph 33 of Count 1 of EPA's Amended Complaint, Respondent FRM restates, realleges and incorporates by reference its answers to Paragraphs 19 through 32 above as if more fully stated herein.

34. FRM denies the allegations contained in Paragraph 34.

35. FRM denies the allegations contained in Paragraph 35. FRM was not advised that Steri-Dine was not registered by the EPA or any other person, entity or agency until October 8, 2008.

Yearly, FRM would fill out EPA forms and notify the EPA by its registration number that it was holding for sale and/or distributing Steri-Dine.

At no time prior to October 8, 2008 did the EPA notify Respondent that the product was unregistered.

36. FRM denies the allegations contained in Paragraph 36.

37. FRM denies the allegations contained in Paragraph 37.

38. FRM denies the allegations contained in Paragraph 38.

39. FRM denies the allegations contained in Paragraph 39.

Count 2

40. As and for its Answer to Paragraph 40 of Count 1 of EPA's Second Amended Complaint, Respondent FRM restates, realleges and incorporates by reference its answers to Paragraphs 19 through 39 above as if more fully stated herein.

41. FRM admits the allegations contained in Paragraph 41.

42. FRM denies the allegations contained in Paragraph 42.

43. FRM denies the allegations contained in Paragraph 43.

44. FRM denies the allegations contained in Paragraph 44.

45. FRM denies the allegations contained in Paragraph 45.

46. FRM denies the allegations contained in Paragraph 46.

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

47-66. As and for its Answer to Paragraphs 47 through 66 of Count 3 of EPA's Second Amended Complaint, Respondent FRM restates, realleges and incorporates by reference its answers to Paragraphs 19 through 46 above as if more fully stated herein.

FRM admits that it sold or distributed FRM CHLOR 1250 to McFleeg, Inc. of Watertown, South Dakota as alleged in Counts 3 through 6.

FRM answers that it did not know the product was not registered at the time of the sale and Respondent believed it was selling and distributing a registered pesticide lawfully.

FRM denies the balance of the allegations in Paragraphs 47 through 66.

Counts 7 - 56

67-316. As and for its Answer to Paragraphs 67 through 316 of Counts 7 - 56 of EPA's Second Amended Complaint, Respondent FRM restates, realleges and incorporates by reference its answers to Paragraphs 19 through 66 above as if more fully stated herein.

FRM admits that it sold or distributed FRM CHLOR 1250 to Allen's Sales & Service, Ottawa, Kansas; to Funk Sales & Service, Ottawa, Kansas; to Dairy Concepts, Lesueur, Minnesota; to L W Chemicals, Mt. Olive, Illinois; to Preston Dairy Supply, Monticello, Iowa; to Tony Howell Equity Group, East Gadsden, Alabama; to Charles Rademacher, Owensville, Missouri; to Riegel Farms, South Solon, Ohio; to Billy Palmer Equity Group, East Gadsden, Alabama; and to Weir Farm Supply, La Veta, Colorado as set forth in the Second Amended Complaint.

FRM states that all of these sales and distributions took place in 2005, 2006, 2007 and in 2008 prior to Respondent receiving any notice from EPA that the product/pesticide was no longer registered.

Therefore, FRM believed it was selling and/or distributing a registered pesticide at the time of the sale.

FRM's premises received a PEI inspection on two occasions in December 2005 by a MDA representative. The MDA representative noted that FRM CHLOR 1250 was being held in stock for sale and distribution along with Steri-Dine.

On both occasions, the inspection reports state "No Violations Suspected".

No Stop Sale Order was issued by EPA to Respondent after either of these inspections.

FRM filled out EPA forms with its registration number each of these years (2005, 2006, 2007) notifying EPA that it held for sale in inventory FRM CHLOR 1250 and Steri-Dine.

FRM was never notified by EPA during this period it was selling unregistered pesticides.

FRM denies the balance of the allegations in Counts 7 through 56.

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

Count 57

317. As and for its Answer to Paragraph 317 of EPA's Second Amended Complaint, Respondent FRM restates, realleges and incorporates by reference its answers to Paragraphs 19 through 316 above as if more fully stated herein.

318. FRM admits the allegations contained in Paragraph 318.

319. FRM denies the allegations contained in Paragraph 319. Respondent specifically disputes the date of this transaction. The date of this transaction was October 7, 2008 – one day before the Stop Sale Order was served upon Respondent.

320. FRM denies the allegations contained in Paragraph 320.

321. FRM denies the allegations contained in Paragraph 321.

Count 58

322. As and for its Answer to Paragraph 322 of EPA's Second Amended Complaint, Respondent FRM restates, realleges and incorporates by reference its answers to Paragraphs 19 through 321 above as if more fully stated herein.

323. FRM admits the allegations contained in Paragraph 323.

324. FRM denies the allegations contained in Paragraph 324. Sodium Hypochloride was sold and distributed to Graber Equipment on October 26, 2008 as Invoice 35782 will prove.

325. FRM denies the allegations contained in Paragraph 325.

326. FRM denies the allegations contained in Paragraph 326.

Section V

Total Proposed Penalty

327. Respondent FRM disputes the proposed penalty.

Appropriateness of Proposed Penalty

328. Respondent FRM disputes the method of calculation of penalties, including the size of business, and the gravity of the alleged violation.

329. Respondent FRM disputes the business revenue calculation used in calculating the proposed penalty.

By way of further defenses as to Counts 1 through 58, Corporate Respondent FRM asserts that the penalty is disproportionate to the situation considering the charged parties' inability to pay and the fact that no significant harm to health or environment occurred as a result of these alleged actions.

Respectfully submitted,

JENKINS & KLING, P.C.

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

Sybil Anderson
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this 9th day of August, 2010.
